Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

2007 TERM

Charles Gray,

Petitioner,

v.

C. Terry Blanton, William C. Dominy, Charles "Chuck" Wilson, Foxworthy, Inc., a Nevada Corporation, Perrie & Cole, LLC., and Meredith Inc. d/b/a/ CBS/Channel 46 of Atlanta,

Respondents.

On Writ of Certiorari to the Court of Appeals of the State of Georgia

---

PETITION FOR WRIT OF CERTIORARI

Charles Gray, In Pro Per
216 Oak Street
Hogansville, GA 30230
706 637 6187

QUESTION PRESENTED

WHETHER COURT INTENTIONALLY MISREPRESENTED MATERIAL FACTS AND FALSIFIED THE RECORDS IN ORDER TO COVER UP THE KNOWN PREDICATE ACTIVITY.

STATEMENT REQUIRED BY RULE 24.1(B)

Pursuant to the Supreme Court Rule 24.1(b), petitioner states that all parties to the proceeding in the court whose judgment is sought to be reviewed are listed in the caption above.

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PETITION FOR A WRIT OF CERTIORARI TO COURT OF APPEALS OF THE STATE OF GEORGIA

Charles Gray, respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of the State Georgia.

OPINIONS BELOW

Final Order of Superior Court of Fulton County Georgia August 30, 2005 (*App., infra I); Final Order* Court of Appeals of Georgia June 15, 2006 unreported (*App. II infra); Denial of Motion for Reconsideration*, court of Appeals June 29, 2006 (*App. III infra); Certiorari denied,* Supreme Court of Georgia October 30, 2006 *(App. IV infra); Denial of Motion for Reconsideration,* Supreme Court of Georgia December 15, 2006 (*App., V infra)*

JURISDICTION

The Supreme Court of Georgia entered its judgment on October 30, 2006. (App. IV. , *infra).* A *Motion for Reconsideration* was denied by the Supreme Court of Georgia on December 15, 2006. (App. V. *infra)*). The jurisdiction of this court is invoked under 28 U. S. C. Section 1254 (Rule 10 (b) (c)).

STATUTORY PROVISIONS INVOLVED

ARGUMENTS ONE AND TWO.

(LEGAL REQUIREMENTS OF NOTICE; STATUTORY DEFINITIONS OF RACKETEERING

Fifth Amendment to the United States Constitution:

> **"No person shall be [d]eprived of life, liberty, or property, without due process of law . . . "**

Fourteenth Amendment to the United States Constitution:

"[N]or shall any state deprive any person of life, liberty, or property, without due process of law;"

O. C. G. A. 48-3-9

(a) Whenever any real estate is levied upon by the Sheriff for taxes, it shall be the sheriff's duty before proceeding to advertise the property for sale as provided by law o give 20 days written notice of the levy to the record owner of the property and the record owner of each security deed and mortgage affecting such property as provided in subsection (b) of this Code section.

(b) In order to entitle to any owner of a security deed or mortgage to notice as provided in subsection (a) of this Code section, the name and address of such owner must be stated: (1) on the face of a properly recorded security deed or mortgage from the owner of the property . . .

Constitution for the State of Georgia at Article I, Section I, Paragraph I:

"No person shall be deprived of life, liberty, or property except by due process of law.

STATUTORY NOTICES MISSING IN RELATED DISPOSSESSORY AND QUIET TITLE ACTIONS:

1. **Notice to tenant Charles Gray as required by OCGA 48-3-19(b)(1)**
2. **Notice to tenant Charles Gray as required by OCGA 9-13-13**
3. **Notice to tenant Charles Gray as required by OCGA 48-4-46**
5. **Notices Statutorily Required to Owner John B. Nelson:**
   a. Notice of Assessment (OCGA 48-2-45)
   b. Demand for Payment (OCGA 48-2-54)
   c. Notice of Execution (OCGA 48-3-3)

d Notice of levy of delinquent Taxes (OCGA 48-3-9)
e. Notice of Petition to Reduce Execution to Judgment (OCGA 48-3-14(c) and (f), OCGA 48-3-13
f. Copy of Any Court Order pursuant to OCGA 48-3-16
g. Notice of Transfer of Execution (OCGA 48-3-19(b)(1); (c)(2)(E) and (c)(3)
h. Notice of Entitlement O.C.G.A. 23-3-66
i. Notice of Barrment of Redemption 48-4-47(a)(2)
j. Execution entered in the Superior Court of owner John Nelson's County of residence pursuant to OCGA 48-3-19, OCGA 9-13-46
k. Notice of Redemption 48-4-45(a)(2)
l. Notice of Transfer OCGA 48-3-19(c)(2)(3)

RACKETEER INFLUENCED CORRUPT ORGANIZATION STATUTES

O. C. G. A. 16-14-4

(a) It is unlawful for any person, through a pattern of racketeering activity or Proceeds derived there from, to acquire or maintain, directly or indirectly, any interest, in or control of any enterprise, real property, or personal property of any nature, including money.

(b) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, in such enterprise through a pattern of racketeering activity.

(c) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section.

O.C.G.A. 16-14-3

As used in this chapter, the term:

(9)(A) ' Racketeering activity' means to commit, to attempt to commit, or to solicit, coerce, or

intimidate another person to commit any crime which is chargeable by indictment under the following laws of this state: [

(xxix) Any conduct defined as 'racketeering activity' under 18 U. S. C. Section 1961(1)(A)(B),(C), and (D);

18 U. S. C. 1961(1)(A):

As used in this chapter –

"(1) "racketeering activity' means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, ..."

18 U.S.C. 1962(a)

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . .

18 U.S.C. 1962 (c)

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities or which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U. S. C. 1962 (d)

It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section. Reference PL 91-452

18 U. S. C. 1961(3)

[As used in this chapter,] "person" includes any individual or entity capable of holding a legal or beneficial interest in property[.]

18 U. S. C. 1961(4)

> [As used in this chapter,] "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity [.]

18 U. S. C. 1962(2)

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

ARGUMENT 3 LAWS (RECUSAL)

The Code of Judicial Conduct (GCA Tit. 24 Appen. A) Judicial Canon 3 (4) (iv):

> **Canon (3)** ***Judges should perform the duties of their office impartially and diligently.*** **The obligation to perform judicial duties with diligence encompasses certain adjudicative and administrative responsibilities. Further, judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where: (4) the judge and/or a spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding.** ***Underline added***

STATEMENT OF THE CASE

FACTUAL BACKGROUND

This case arose from a property tax sale and foreclosure in Fulton County, Georgia and from publicly

made defamatory statements uttered by Respondent Blanton on and after December 08, 2003.

Numerous property tax notices are required under Georgia State law to notify the property owner of a tax deficiency. The required notices were not given to the owner or occupant of the real property. The Fulton County Sheriff's Office is in charge of giving most of those required property tax notices. Without giving the required notices, the Fulton County Sheriff's Office sold the tax fi fa to Vesta Holdings, Inc., a nominee and front for Heartwood II, a wholly owner subsidiary of Bank of Atlantic in Florida. Vesta Holdings, Inc., had control of the official records, seals and stamps of the Fulton County Sheriff's Office and could cherry pick properties that could or would be sold for tax deficiencies.

Without notice to the owner and occupants, Vesta and the Fulton County Sheriff's Office sold the property to Foxworthy, Inc., a Nevada corporation, for far less than its market price. Foxworthy, Inc., was required by law to give the owner notice of its transaction and claims by certified mail. Foxworthy did not serve the required notices as required by law. Foxworthy retained attorney C. Terry Blanton (Blanton) to manage these tax and property transaction in the State of Georgia. Foxworthy thereafter commenced a quiet title action in the Fulton County Superior Court to foreclose on the real property. Foxworthy, Blanton and the Special Master Zimmerman then attempted to extort the sum of the tax purchase plus 20% interest from the owner. The owner declined to pay Foxworthy's extortionate collection of credit based upon several substantive grounds including failure to provide due process.

Fulton County Superior Court judge, Stephanie Manis (Manis), while acting under the influence of Foxworthy, Blanton and Zimmerman, repeatedly refused to take into consideration the requirements for tax notices in the State of Georgia and the requirements that the Sheriff's Office strictly follow the law. Manis refused to consider

and did not faithfully perform the duties of a judge under the Constitution and laws of the State of Georgia and continually refused to exercise the powers of that office within and under the limitations of the Constitution for the United States and deprived the owner and Charles Gray of due process of law and equal access to the courts.

On December 08, 2003, the Fulton County Marshall's Office carried out a dispossessory action against Petitioner Charles Gray and others, oustering them from their residence and sole shelter on Edgewood Avenue, in Atlanta, Georgia and dumping the contents and personal property of the home into the street. Petitioner Gray was the caretaker of the home for owner of record, John B. Nelson, an out of state owner, who lives in Colorado. Petitioner Gray also had a prior mortgage on the property. Respondent C. Terry Blanton was and is an attorney of record for Respondent Foxworthy who had simultaneously brought the dispossessory action and related quiet title action.

At the time when Gray was evicted from the home, he was approached by a newscaster from CBS – Channel 46 (Respondent Meredith). Petitioner Gray explained to the newscaster that the Fulton County Sheriff's Office, Foxworthy, Inc. and others had implemented a scheme of acquiring properties in Fulton County without giving the owners proper tax notices. Gray, gave the CBS newscaster a copy of the *Petition for Writ of Certiorari* which he had filed (mailed) to the Supreme Court of the United States four days earlier on December 4, 2003 in *Charles Gray v. Foxworthy, Inc., et al.*. USSC No. 03-1194. Gray used the *Petition for Writ of Certiorari* to show the newscaster what had and was going on. The document showed the statutorily required notices and Gray explained that the taking and ouster was a clear violation of the United States Constitution and the Constitution for the State of Georgia. Page 4 and 20 of the above *Petition for Writ of Certiorari* USSC number 03-1194 [R-23] contained the list of the following codified

tax notices that were required by law and Constitutional due process that were not given: OCGA: 48-3-19(b)(1), 9-13-13, 48-4-46, 48-4-45, 48-2-45, 48-2-54, 48-3-3, 48-3-9, 48-3-9, 48-3-14(c), 48-3-14(f), 48-3-13; 48-3-16, 48-3-19(b)(1), 48-3-19(c)(2)(e), 48-3-19(c)(3), 48-4-47(a)(2), 48-3-19, 9-13-46, 48-4-45(a)(2), and 48-3-19(c)(2)(3). Petitioner explained to the newscaster that none of these tax notices have ever been produced by Respondents Foxworthy or their attorneys, Respondents Blanton and Dominy, and none of the statutorily required tax notices were discovered by researching the appropriate county offices or under the Georgia Open Records Act.

State Representative Douglas Dean also was arrested by the Fulton County Marshall's office for having criminally trespassed on the property that was subject of the eviction. State Representative Dean was actively pursuing matters in the State Legislature that property in Fulton County was being taken without notice. These same matters of lack of due process in property tax matters were continually in the news publications and broadcasts at that time. CBS had earlier done a "Special" news broadcast property being sold on the courthouse steps in Fulton County Georgia and the irregularities.

The "CBS" news broadcaster that had talked to Petitioner Gray then went up to Respondents Blanton and Dominy who were on the scene. Respondent Blanton spoke not only to the "CBS" news broadcaster but to a small crowd of people that had assembled around them. Petitioner Gray left the oustering for a meeting at the State Capitol with Sewell Brumby, legal assistant to the Georgia State Legislature to discuss the continuing problems in Fulton County, Georgia with the lack of tax

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[1] At that time, Petitioner had not learned that Foxworthy, Inc., also had indirectly sold a million dollar piece of property to the Fulton County Tax Commissioner for an approximate reduction of sixty percent. During this same period when the Fulton County Tax Commissioner was subpoenaed to produce the missing tax notices he was a no show in court.

notices and the continuing plunder of property rights there by this same association and enterprise.

While interviewing Blanton and Dominy, Respondent Meredith (CBS – Channel 46)) told Blanton that Gray had said that the tax notices were not given. Mr. Blanton publicly defamed and libeled Gray by saying that Gray was a "liar."

Respondent Meredith (CBS – Channel 46) repeatedly aired that defamatory and libelous statement to a great many people during the December 08, 2003 television news broadcasts. The only part of Petitioners Gray's interview that was aired by Respondent Meredith to the public was "Without due process we have nothing" See [R - 19, 20, 21], See Video attached as evidence by Respondent Meredith (CBS – Channel 46). Respondent CBS did not investigate the tax notices any further before repeatedly airing the defamatory statements.

Petitioner Gray was later repeatedly informed by others that Respondent Blanton had called him a liar and repeatedly defamed him. After the broadcast, people from all over Georgia came up to the Petitioner and questioner him concerning the eviction which Respondent Meredith, ["CBS", Channel 46] had televised.

Respondent Blanton told the newscaster that Charles Gray's statement concerning the failure to serve tax notices was a lie. Blanton stated that the owner of record of the property John Nelson had stated that he got proper notice and that the judge in the case had stated that due process had been served. Respondent Blanton was in receipt of court documents and other documents that unequivocally showed that not only had John Nelson never received the tax notices, he certainly had never stated that he had gotten proper notices.

Petitioner Gray sent a *Demand for Retraxit* pursuant to O.C.G.A. 51-5-12, to Respondents C. Terry Blanton and his associates and Respondent Meredith (CBS, Channel 46) for the defamatory remarks made. Respondent

Meredith, "CBS" did not respond to the *Demand for Retraxit.*

Respondents Blanton and Foxworthy, Inc., responded to the *Demand for Retraxit* with more defamatory remarks which Petitioner incorporated into this *Complaint for Defamation.* (See [R – 6] *Complaint in Defamation,* Counts 28, 29, ("outrageous lies." "same old litany of lies." "lying about Judge Manis," etc.)

1. On August 02, 2004, Petitioner filed a *Complaint in Trespass - Defamation and Racketeering* against Respondents in the Superior Court of Fulton County Georgia. Petitioner alleged that Respondent Blanton in conspiracy with others purposefully slandered him when Respondent Blanton publicly called Petitioner Gray a "liar"[2] and Respondent Meredith ("CBS") defamed Gray when it publicly aired and repeated the defamatory statements to a great many people. Petitioner Gray alleged that Respondent Meredith (CBS – Channel 46) knew or should have known that Blanton's statement was false and defamatory and slandered Gray. Petitioner Gray also alleged that Respondent Meredith was not fair or honest with its story as it omitted practically everything that Appellant Gray had told the newscaster and excluded the information given to the newscaster. *Complaint in Trespass – Defamation* [R- 6]

2. On August 05, 2004, in the *Complaint in Trespass – Defamation* case, Petitioner filed a *Motion for Recusal* against Fulton County Superior Court Judge Stephanie Manis for *inter alia*, being a material witness to the disputed facts in the case ('witness-in-chief"), the continued appearance of impropriety, for being bent of mind against the constitutional and statutory requirements of notice, and being biased and prejudiced. Judge Manis knew for a fact that certain and several statutory notices were not given in Superior Court case 02-

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[2] "An untruth deliberately told, the uttering or acting of that which is false for the purpose of deceiving; intentional misstatement. See: Black's Law Dictionary, 5th edition.

CV-51576, *Foxworthy v. John Nelson [Charles Gray] et al. (quiet title)* and Magistrates Court Case 02-ed-100741, *Foxworthy v. John Nelson [Charles Gray] et al.* (dispossessory). Judge Manis failed and willfully refused to take due consideration of the material facts concerning the nonexistent notices before the court, thus depriving Petitioner of honest services and meaningful access to the court. Manis perpetrated the same frauds from the bench in Petitioner's *Original Petition for Injunctive Relief and Notice of Misprision of Racketeering* (*Gray v Levenson et al., Superior Court of Fulton County, 03-CV6699; {R-2] and Gray v. Manis, Superior Court of Fulton County, 03-CV-71394(Mandamus)* where Manis refused to address Petitioner's material issues which included the following predicate acts in furtherance of the unlawful schemes and enterprise:

A. Aiding and abetting Respondent Foxworthy, a Nevada Corporation doing business in Georgia, in its unlawful enterprise by repeatedly fixing and rigging cases in the court and by knowingly defrauding property owners of property and the bundle of rights to property without due process of law (no notice).

B. Concealing the facts and hindering and obstructing proceedings that would establish that Respondent Foxworthy was involved in a pattern of interstate loan-sharking and in the extortionate collection of credit in relationship to property and the rights to property in Fulton County, Georgia.

C. Concealing the facts and hindering and obstructing proceedings that would establish that Respondent Foxworthy, through one of its associates enterprises, Vesta Holdings, was in control of and was actually manipulating the tax notice process going out of the Fulton County Tax Collectors Office[3] and was deliberately

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[3] Vesta Holdings no longer maintains an office in the tax commissioner office or uses the Sheriff's name stamp. Sheriff was removed from office for related corruption. Active Federal Investigation continues into ex-Sheriff's activities.

concealing and making the information and data non transparent in furtherance of the scheme and enterprise.

D. Judge Manis, after being informed of the scheme and enterprise, refused and failed to take any cognizance of the fact that the tax notices required by the Constitution and laws were not given and were not in evidence in the record even though the tax notices had been repeatedly requested and subpoenaed.

E. In furtherance of the scheme and enterprise, Respondent Foxworthy was engaged in bribing the Special Master, Barry Zimmerman to rig the cases and ignore the fact that tax notices were not given thereby depriving property owners of honest services. Respondent Foxworthy and its interstate enterprise prepared the legal findings of the Special Master for the purpose of influencing the court and corruptly obtaining title to property. In order to establish a repetitive pattern of unlawful conduct and deprivation of rights, Plaintiff has shown and the court records show that Special Master Zimmerman acted in over a dozen related cases where the owners of the property were not given notices as required by law and that the Final Orders were the product of the direct participation and corrupt influence of the law offices of Respondent Blanton.

F. In furtherance of the scheme and enterprise to deprive Petitioner and others of property and rights to property and of honest services, Respondent Foxworthy, and its attorneys had bribed and made kickbacks to Fulton County Tax commissioner, Arthur Ferdinand by selling him (indirectly, through a "white man"[4]) property that was obtained through and in furtherance of the scheme and enterprise. Foxworthy conveyed the property at a steeply discounted and reduced price that was far below market value. (70 acres that had been valued at over one

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[4] Black Fulton County Tax Commissioner Arthur Ferdinand alleged that he had a "white" former employee purchase the property (act as a front) from Foxworthy, Inc. because there was prejudice in Fulton County against blacks in property purchases.

million dollars for less than $450,000.) Evidence in the record also showed that Tax Commissioner Arthur Ferdinand and Fulton County Sheriff Jacqueline Barrett knew for a fact that Foxworthy, Inc., and its enterprises (Vesta Holdings) were intentionally acquiring property whose owners did not receive statutory notices (cases of *Johnson and Johnson v. Sheriff; Aetna v. Vesta et al.)* Neither Sheriff Barrett or Tax Commissioner Arthur Ferdinand came forward to expose or to take official action against this systematic fraud scheme and enterprise thereby depriving the owners of honest professional services and defrauding owners.

G. While and after taking bribes and kickbacks, Arthur Ferdinand aided and abetted Respondent Foxworthy and the enterprises by refusing to appear in court when subpoenaed and to produce records and documents concerning the required legal tax notices or to give truthful and sworn testimony. This obstructed the due administration of justice and deprived Petitioner and others of full and fair use of the courts and to due process.

H. In furtherance of the scheme and enterprise, Respondent Foxworthy, a Nevada Corporation, and its attorney, corruptly attempted to and did influence the Fulton County Sheriff's Office into believing that legal "notice" was not necessary and that the law could be ignored and that the "sheriff's office could make no mistakes."

This corrupt influence occurred shortly after Respondent Foxworthy, Inc., (*Harper v. Foxworthy, Inc. et al.,* 254 Ga App. 495, 562 S.E. 2d 736 (2002) influenced the Court of Appeals to enter a novelty ruling that tax notices were not mandatory under the Constitution and laws, but optional in O.C.G.A. 48-3-9 and O. C. G. A. 48-3-10. Foxworthy and its enterprise through the Sheriff's office were conjuring and making false claims against citizens and property owners to extort funds from them.

I. With a part of the proceeds obtained from the

enterprise, the Sheriff of Fulton County had created a slush fund from property that the enterprise had illegally sold without giving due notice to the owners. Sheriff Barrett was removed from public office for the secret and illegal interstate transmission and use of those funds. Sheriff Barrett has been and remains under federal criminal investigation. Federal investigation was necessary because the local State courts had been tainted and corruptly influenced by the enterprise and had furthered the schemes to the damage of the people of Fulton County and property owners.

J. In furtherance of the enterprise, Respondent Foxworthy, Inc. illegally lobbied the Georgia General Assembly thru unregistered lobbyist and attorney Robert Proctor. The illegal lobbying effort made by the enterprise in the Georgia General Assembly was intended to make sure that the constitutional and statutory requirements for legal notice were abolished in the State of Georgia. This would enable the enterprise to acquire more property and to expand the profits and proceeds of the enterprise and to the damage of others. Petitioner Gray complained of Proctor's devious and unlawful behavior to the Georgia State Ethics Commission. Proctor was fined $2,000 for acting as an unregistered lobbyist.

K. Respondent Foxworthy, by and through Respondents Blanton and Dominy, extorted funds from Gray under the guise of rent that was not due and took the property without due process of law. This was furthered by the Fulton County Sheriff's office that benefited from the proceeds of the unlawful enterprise and predicate activity.

L. Respondent Foxworthy, Inc., in a continuing pattern of conduct and with intent to corruptly influence those in public offices in the State of Georgia, has continued to publicly slander and libel this Petitioner. The State courts intentionally ignored the facts and pleadings of he Petitioner, even to the point of altering and falsifying the records to identify Petitioner's *Motions for Sanctions* as "Unusual Motions" in order to cover up the nature of the allegations and the ongoing tort of outrage. This

continued and repeated pattern of conduct has deprived Petitioner of full, fair, impartial, and meaningful due process in and out of the Courts located in Fulton County, Georgia and has deprived the Petitioner and citizens of honest services.

3. On August 30, 2004, Superior Court Judge Manis refused to recuse herself and refused to address the material issues of the complaint including the fact that she was a material witness in chief to the fact that the statutorily required tax notices had not been given by the enterprise and the Sheriff's office had not followed the proper statutory procedures. While depriving Petitioner of honest services, Manis refused to address the issue of the influence and corruption of Special Master Zimmerman, and intentionally misrepresented material facts in her findings in the *Request for Injunctive Relief.* Judge Manis also repeatedly concealed the fact that she did not have subject matter jurisdiction in the matters as the sheriff had failed to follow mandated procedures and the record was void of any indication the Sheriff and others had follow the proper procedures. Judge Manis perpetrated an intentional fraud from the bench for the purpose of covering up the fact that Fulton County was plagued with tax notice fraud and that the enterprise had corruptly influenced public officials in the County of Fulton. Petitioner Gray was repeatedly denied meaningful access to the court and to honest services by Manis.

4. On, August 30, 2004, Superior Court Judge Manis, in a *Final Order* [App I, *infra*] intentionally ignored and falsified the facts of the case, relied on her own false statements and fraudulent representation concerning the notices and used the bench to perpetrate and further the fraud scheme. Judge Manis was intentionally derelict in the duties of the public office while she repeatedly refused to allow or take cognizance of discovered and provable facts and to address material and substantive issues in the complaint. Manis, having prior material knowledge of essential facts that proved Petitioner's case

and that she had furthered the unlawful schemes of the enterprise, denied the Petitioner full, meaningful and equal access to the court and deprived Petitioner of due process of law and honest services.

5 In furtherance of the scheme and enterprise, Manis refused to address the charges of racketeering (Count 30), as well as the motions before the court for sanctions against Respondent Blanton for making intentionally false statements and perjury, i. e. lying about the issue of notice (R – 36, p. 353); and refused to address counts 28, 29, and 31. By repeatedly engaging in this pattern of unlawful conduct and abuse of office, Manis used the court as a protection racket for the enterprise and its attorneys to the damage of property owners and others.

6. On or about September 30, 2005, Petitioner appealed the Fulton County Superior Court's *Final Order* to the Court of Appeals of Georgia. Petitioner Gray's enumerated errors included *inter alia*: Manis should have recused herself because she had prior knowledge and was and is a material witness to disputed facts concerning the legally required notices. Manis had prior knowledge and material facts and knew that Blanton libeled Gray by publicly calling him a liar and knew that Blanton made intentionally false statements in the records of the case that the required tax notices had been duly served and given. Judge Manis' *Grant of Summary Judgment* to Defendants Blanton et al. was intentionally false and fabricated facts not in evidence concerning the missing tax notices that were in issue and knew that those physically identifiable tax notices have never appeared in the records of this or any other related case.

7. The Court intentionally overlooked and willfully failed to rule on several counts. Manis' *Grant of Judgment on the Pleadings* for Respondent Meredith was in error as facts were in dispute concerning the truth of the material existence of those legal tax notices. These physical documents and records are material to Gray being a "liar." Petitioner also alleged that Respondent Meredith's report was not "fair and honest" an issue for

the jury to decide. The whole defamation suit turned upon the issue of whether tax notices were actually given or whether they were not given. Petitioner was refused access to the court as the court refused to meaningfully address the issue and refused to take cognizance that essential physical evidence did not appear anywhere in the lower court records even though it was repeatedly requested and subpoenaed.

8. On June 15, 2006, Georgia Court of Appeals Judge Ellington, affirmed the lower court's decision. (*App. I)* Judge Ellington falsified the findings in the record in order to uphold Judge Manis' refusal to recuse. Judge Ellington was made fully aware of the fact that Judge Manis had prior knowledge and was a material witness in chief to relevant facts in the case (the non existent tax notices) and that she had a personal bias and interest (covering up her lack of subject matter jurisdiction in the seminal quiet title action) in upholding the *Grant of Summary Judgment* to the Blanton Respondents and *Judgment on the Pleadings* to Respondent Meredith (CBS – Channel 46). Appellate Judge Ellington, while knowing that the physical notices were not in the record, also falsified the findings in the record in order to evade the issue that tax notices were not given as required by law and that the Defendants had slandered Petitioner when they had stated to the public and to the news media that Petitioner Gray was lying about the issue of the lack of tax notices in the related quiet title and dispossessory cases. Judge Ellington provided a cover for Manis' corrupt actions. Judge Ellington's actions denied the Petitioner meaningful access to the court and honest professional services when he intentionally ignored the material facts of the case that the necessary evidence of notices were not in the record, and intentionally made findings upon information that he knew to be false. Judge Ellington committed a fraud from the bench in an effort to provide undue and unwarranted protection for the enterprise and the Respondents and to deprive Petitioner of a full, fair

and impartial trial on the merits of his case and meaningful access to the court. (*de novo review).*

9. On June 29, 2006, Petitioner was summarily denied a *Motion for Reconsideration* by the Court of Appeals (*Appendix* II, infra*)*

10. On July 19, 2006, Gray petitioned the Supreme Court of Georgia for writ of certiorari. Gray brought the matter to the State Supreme Court to show the inferior court's ongoing abuse as well as the intentional misrepresentation of the material facts and the continued cover up of the unlawful activities and corrupt influence of the enterprises, including but not limited to, Foxworthy, Inc., Blanton and Associates, Judge Stephanie Manis, Special Master Zimmerman, Judge Ellington and others.

11. On August 15, 2006, Petitioner filed a *Motion for Sanctions* against the Blanton Respondents alleging that Under Supreme Court Rule 7 Sanctions were appropriate as the Blanton Respondents had breached Rule 29:

> "Personal remarks which are discourteous or disparaging to opposing counsel or to any judge are strictly forbidden, whether oral or written,"

when respondents maliciously defamed Petitioner Gray in a brief on or about July 26, 2005 in violation of O. C. G. A. 51-5-9 ("Malicious Abuse of Privilege.") Petitioner alleged that the Blanton Respondents had defamed Petitioner, the information was false, Blanton and Respondents knew it to be false, it was not pertinent to this case and it was a ruse and subterfuge to cover up the ongoing criminal enterprise. Petitioner also alleged that Blanton and his associates were engaged in a relentlessly unyielding pattern of malicious defamatory conduct, a continuing tort of outrage.

12. On October 03, 2006, Petitioner Gray filed a *Second Motion for Sanctions* against Blanton and his enterprise, again stating that the Blanton Respondents should be sanctioned for defamatory conduct which had occurred, the argument being essentially the same as in number eleven above, that the comments were defamatory, false

and known to be false, not pertinent to the case and a ruse and subterfuge to cover up the ongoing criminal activities of Blanton and Respondents, i. e. plundering Fulton County through bribery of officials, bribery of judges, corrupt influence on the Sheriff's Office (helping create a slush fund) and numerous other predicate acts that were part of their ongoing scheme to defraud the public.

13. On October 30, 2006, the Supreme Court of Georgia , *all justices concurring*, summarily denied the Petitioner's *Petition for Writ of Certiorari. (App. IV infra)* The Supreme Court, failed to take due consideration of material facts. Facts before the court clearly indicated that criminal activity had and was occurring and that Petitioner Gray was repeatedly being victimized. This continued pattern of conduct has deprived Petitioner Charles Gray of his right to seek and obtain redress of grievance for wrongs committed against his person, property, and reputation, has deprived him of honest services, and has abrogated and abolished his right to a full, fair, meaningful and impartial trial.

15. On November 09, 2006, the Georgia Supreme Court met pursuant to adjournment and summarily denied Petitioner's *Motion for Sanctions* and *Second Motion for Sanctions.* Said action of the court denied Petitioner meaningful and adequate access to the court as the Constitution of the State of Georgia and the Federal Constitution required. This court abused its discretion by failure to make findings of facts and law.

16. On or about November 20, 2006, Petitioner Gray filed a *Motion for the Court to Reconsider* its final order of October 20, 2006.

17. On or about November 21, 2006, Petitioner Gray filed an *Amended Motion for Reconsideration.*

18 On December 15, 2006, the Supreme Court of Georgia summarily denied the *Motion for Reconsideration (App IV, infra)*

REASONS FOR GRANTING CERTIORARI

This case is on all fours with the plight of the NAACP in *NAACP v. Alabama, 377 U. S. 288,* where the NAACP

sued in a federal court alleging failure by the Alabama courts to afford it a hearing on the merits. Fulton County Georgia's and Atlanta's reputations for corruption cannot be disputed. This case presents corruption that has been brought into the community and state employees by interstate racketeers and extortionists, plundering property and other things of value through the intentional use of the courts. This case is of public concern, not only because of the extensiveness of the protected criminal activities and plunder, but due to the facts that it has thriven off the abuse of the constitutional right to notice, and the intentional striving and drive to eliminate the right to notice. The paramount duty of Government in Georgia is to protect property. Without due process (notice) there are no property rights. Findings of the courts are based on an intentional falsification of the records in order to conceal and cover up predicate acts.

ARGUMENT AND CITATIONS OF AUTHORITIES

The State's judicial process does not provide fair procedures to remedy the wrong that Petitioner Gray has alleged, thus denying Petitioner meaningful access to the courts. The instant matters involved interstate extortion, constitutional deprivation of the right to honest government services and lack of meaningful access to the courts. The Supreme Court has declared, "Certainly the right to petition extends to all departments of the Government. The right of access to the courts is but one aspect of the right of petition." *California Transport v. Trucking Unlimited,* 404 U. S. 508, 510 (1972). The enterprises' activities and influence (Foxworthy, Meredith, Judge Manis, Special Master Zimmerman, Judge Ellington,) have rendered ineffective and abolished any state court remedy that Petitioner has. Judge Stephanie Manis has denied Petitioner meaningful access in four different cases involving Petitioner Foxworthy, Inc. and deliberately obstructed

justice and attempted to cover up the ongoing enterprise schemes, artifices, and unconstitutional activities.

The enterprises activities and corrupt influence has denied Petitioner Gray and others the right of access to the courts by covering-up the racketeering activities of Foxworthy, Inc., and the interstate enterprise. "It is beyond dispute that the right of access to the courts is a fundamental right protected by the Constitution." *Graham v National Collegiate Athletic Ass'n,* 804 F.2d 953, 959 (6th Cir. 1986).

In fact, the right of access to the courts finds support in several provisions of the Constitution including: the Due Process Clause of the Fourteenth Amendment, *Wolff v McDonnell,* 418 U.S. 539, 579, 94 S.Ct. 2963, 2986, 41 L. Ed.2d 935 (1974), the Equal Protection Clause, *Pennsylvania v. Finley,* 481 U. S. 551, 557, 107 S.Ct. 1990, 1994, 95 L.Ed.2d 539 (1987), The First Amendment, *Turner v. Safley,* 482 U. S. 78, 84, 107 S.Ct. 2254, 2259, 96 L.Ed.2d 64 (1987)(citing *Johnson v. Avery,* 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed. 718 (1969)), and the Privilege and Immunities Clause of Article IV, *see, e.g., Chambers v. Baltimore & Ohio R.R. Co.,* 207 U. S. 142, 148, 28 S.C. 34, 35, 52 L.Ed. 143 (1907); *Smith v. Maschner,* 899 F.2d 940, 947 (10th Cir. 1990).

Therefore, if a party engages in actions that effectively cover-up evidence and this action renders a plaintiff's state court remedy ineffective, they have violated his right of access to the courts. *See Bell v. City of Milwaukee,* 746 F.2d 1205, 1261 (7th Cir. 1984)

The United States is bound by Treaties, entered in good faith with the United Nations, requiring that it provide effective remedies and redress for violations of Constitutional Rights, "notwithstanding that the violation has been committed by persons acting in an official capacity" and to "develop the possibilities of judicial remedy." See The International Covenant on Civil and Political Rights; U. N. Gen. Assem. Res. 2200 A (XXI) of 16 Dec. 1966; Ratified by the U. S. Senate in June 1992.

See Article 2. See also the Universal Declaration of Human Rights, U. N. Gen. Assem. Res. 217-A (III) of 10 Dec. 48; Art. 8. It states:

> "Everyone has the right to an EFFECTIVE REMEDY by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." [emphasis added]

Petitioner Gray's petition for redress for grievances in the instant matters, concerning lack of constitutionally required tax notices, slander and defamation, racketeering activities has fallen on selectively deaf ears. Georgia State Courts have consistently and repeatedly refused to address the wrongs committed against the Petitioner in order to hide and conceal the ongoing unlawful enterprise involving state agents and departments which have received benefits from it and conspired to aid and abet the unlawful conduct of the enterprise and its predicate activities which include but are not limited to, extorting funds, taking property without due process of law, bribery and corrupt influence on State employees, obstructing court documents and by intentionally failing to give legal notices.

Judge Manis and the rest of the enterprise effectively usurped the power of the State legislature by repealing and abolishing the law and provided no remedy for the victims of the enterprise in state court. To the unlawful and systematized enterprise must be added that these same corrupt influences and dishonest services violated Petitioner's secured right to due process, and slandered petitioner. The enterprise extorted funds from Petitioner under threat, destroyed and stole petitioner's property and created and made false claims against people to extort funds.

Courts have been used for and as RICO enterprises like local law enforcement offices. *U. S. v. Murphy*, 768 F.2d 1518 (1985); *Diaz v. Gates*, 205 U. S. App. Lexis 17228 (9th Cir. 2005). In this case property was in fact taken without due process of law and extortion did in fact occur.

The Fulton County Sheriff's Office was also directly used to engage in and further the predicate activities resulting in a slush fund in the Sheriff's Office. "It is immaterial whether the enterprise is considered as a legitimate or illegitimate enterprise." *U. S. v. Turkette,* 455 U. S. 576 (1981).

ARGUMENT I

COURT KNOWINGLY AND INTENTIONALLY FALSIFIED THE RECORD WITH IT'S MATERIAL FINDING "A SPECIAL MASTER DETERMINED, *INTER ALIA*, THAT THE PROPERTY'S PREVIOUS OWNER HAD RECEIVED ALL REQUIRED NOTICE OF THE FORECLOSURE PROCEEDINGS AND THE QUIET TITLE ACTION."

The Appeal Court's entire opinion (*Appendix II, infra)* is infected with the court's intentional falsification of material facts concerning the gravaman of the complaint– That Gray was not lying about the missing twenty tax notices. These falsified findings and misrepresentation of material facts permeate and infect all of the other findings of the court.

The Appeals Court in its "by way of background" discussion falsifies the record by misrepresenting material findings of fact. (Appendix II, *infra, p 1, 2)* (Court Opinion of June 15, 2006). The court states,

> "A Special Master determined, inter alia, that the property's previous owner had received all required notice of the foreclosure proceedings and the quiet title action...."

A review of the Special Master's Findings does not find the above "determination" by the special master. [R – 34 *Special Master's Findings*]. A review of the *Special Master's Findings* clearly indicates that the Special Master refused to address the issue that there had been a complete tax notice failure under O. C. G. A. 48-3-19(b)(1), 9-13-13; 48-4-46; 48-4-45; 48-2-45; 48-2-54; 48-3-3;

48-3-9; 48-3-14(c) and (f), 48-3-13; 48-3-16; 9-13-46; 48-4-45a(2); 48-3- 19(c)(2)(3).

In fact, the Special Master ruled that Petitioner Gray had no standing to bring up the lack of notices in his *Motion to Dismiss*, thus allowing the court to ignore the issue of missing tax notices. The court noted in its findings that "Gray lacked standing to contest the quiet title petition." (R –II Appeal Filings, *App. II, infra p.2 second line).* Serving tax notices in the case required physical documentary evidence and proof of service as required by law, otherwise the land title is not only voidable, but void." *Thatcher et al. v. Powell et al.,* 19 U. S. 119. accord *Southern Pine Company of Georgia v. Kirkland,* 112 Ga. 216; 37 S. E. 362; (1900), *Martin v. English,* 23 Ga. App. 484. There is no such physical documentary evidence in the court records. Petitioner Gray made provable statements of fact to the news reporters about the failure to provide due process. Petitioner went so far as to subpoena the notices, notice records and proof of service of the notices in the case where Special Master Zimmerman made his determination and where Fulton County Judge Manis sat as judge. The notices and proof of services were not produced because they did not exist and could not be produced. This intentional falsification of the record by the Court of Appeals concerning the special master's findings is material as it is directly relevant to the gravaman of the complaint, Respondent Blanton calling Appellant Gray a "liar" concerning the issue of the missing tax notices.

The Court of Appeals intentionally falsified the record, in furtherance of covering up the predicate activity, when it stated that the "Special Master made a determination that the owner of the property was given proper notice" as it was not supported by the records before the Court of Appeals nor had any of the missing notices complained of in the instant matters ever been produced or can be as Petitioner alleged to the CBS reporter.

ARGUMENT II

APPEALS COURT INTENTIONALLY MATERIALLY FALSIFIED THE RECORD WHEN IT STATED THAT "THE REPORTER THEN CONFRONTED BLANTON WITH GRAY'S CLAIM THAT FOXWORTHY FAILED TO SERVE THE PROPERTY OWNER AS REQUIRED."

The court also in its "by way of background" [Appendix II, *infra* at page 2] intentionally falsified the record when it opined:

> "According to Gray's defamation complaint, a reporter for CBS 46 Atlanta's News Channel ("CBS 46"), which Meredith owns and operated, interviewed Gray as the eviction was taking place.
>
> The reporter then confronted Blanton with Gray's claim that Foxworthy failed to served the property owner as required."

There is nothing in Gray's *Defamation Complaint* [R-6] that the reporter confronted Respondent Blanton with the claim that Gray had stated that "*Foxworthy* failed to serve the property owner as required." Gray's claims presented to the CBS reporter taken verbatim from the complaint were as follows:

Page 3 of *Complaint in Defamation Trespass"*

> "During the ouster, Plaintiff Gray talked to a CBS Channel 46 Newscaster and explained what was going on and handed him a copy of a *Petition for Writ of Certiorari* which had been filed with the Supreme Court of the United States on December 04, 2003. Plaintiff Gray marked pertinent pages of the writ for the newscaster by dog earring them as he explained the lack of notices that had occurred concerning 897 Edgewood Ave." N. E. [R-6]

Petitioner Gray's *Complaint* about the missing tax notices included not only the tax notices that Foxworthy, Inc, had not given as required by law but also about the

missing tax notices that were not given before Foxworthy, Inc. became involved and were not done by his predecessors (The Sheriff's Office, Tax Commissioner, Vesta Holdings). (*Complaint in Trespass* [R-6] at page 5 line 3 "predecessors")

The *Petition for Writ of Certiorari* handed to the CBS newscaster on 12/08/03 (USSC 03-1194 *Gray v. Foxworthy, et al.*) gave lists of the missing notices and explained that Foxworthy, Inc., was engaged in a ongoing fraud utilizing the lack of tax notices to its advantage. See [R – 23] *Plaintiff Gray's Rebuttal to Defendant Meredith,* attached Exhibit *Petition for Writ of Certiorari.* (US Supreme Court Case Number 03-1194) This court can take JUDICIAL NOTICE of this record since it is in this court's possession and lists the missing tax notices and racketeering activities of the respondents which was filed before Blanton made the first of his defamatory statements concerning the tax notices on December 08, 2003. The Court of Appeals falsified the record with its finding that (*App. II, infra at page 2)* "The reporter then confronted Blanton with Gray's claim that Foxworthy failed to served the property owner as required." The Appeals Court falsification of the records from the get go was in order to cover up the issue of the missing tax notices, the lack of subject matter jurisdiction of Judge Manis and that Respondent Foxworthy and associates were perpetrating a fraud to obtain properties by using the lack of tax notices and procedural irregularities to their advantage.

Affidavits in the record from eye witnesses also indicated clearly that the reporter asked Respondent Blanton about missing tax notices, not missing notices that Foxworthy had not sent.

This egregious falsification of the record by the court was material because it limited Petitioner's cause of action to a complaint solely about tax notices that were not given by Respondent Foxworthy, Inc. This case is and always was about more than the missing Foxworthy

tax notices. (Notice of Barrment, etc.). The court's falsification of the records that (1) the Special Master ruled that the owner got required notices, and (2) the reporter asked Blanton about Respondent Foxworthy's notice deficiencies are material as it changes the subject matter of Petitioner Gray's *Complaint* about the missing twenty tax notices not given by others and the issue of the lack of subject matter jurisdiction of Judge Manis because the Sheriff did not follow the legal procedures. Court conveniently falsified the record by its fasification of the material facts of the case in order to cover up the known predicate acts.

ARGUMENT III

COURT MATERIALLY FALSIFIED THE RECORD WHEN IT STATED "GRAY IDENTIFIES NO AUTHORITY, HOWEVER, FOR HIS POSITION THAT A JUDGE CAN PROPERLY BE CALLED AS A WITNESS ON THIS BASIS" WHILE IGNORING THE FACT THAT INFERIOR JUDGE WAS A MATERIAL WITNESS AND REQUIRED BY LAW TO RECUSE SUA SPONTE

Nowhere in Petitioner's argument to the Court of Appeals does Gray argue or have "[a] position that a judge can properly be called as a witness on this basis,"[sic] as indicated in Judge Ellington's findings. (*App. II, infra a p. 4 last line and first and second lines of p. 5* The court falsified the record in order to cover up the fact that the inferior court judge was mandated to recuse. This attempted sophistry allowed the Court of Appeals to avoid addressing the specifics of Judge Manis' material witness testimony concerning the missing tax notices, irregular procedures and Foxworthy's et al.s' predicate acts of racketeering.

Petitioner Gray's "position" has always *inter alia* been quite simple: Judge Manis was a material witness, "witness in chief" The court ignored controlling authority in making its determination that the recusal of the superior court judge was not mandated by law. The

court solely relied on O C G A 15-1-8. Pages 2-5 of Opinion. (*Appendix II, infra pp. 2-5)*

"When considering the issue of disqualification, both OCGA 15-1-8 and Canon 3E of the Code of Judicial Conduct should be considered." *Stephens v. Stephens*, 249 Ga. 700, 701 (2) (292 SE2d 689) (1982). The court continued, *Id*, and stated that, "From at least 1910, the grounds for disqualification were limited to those enumerated in the statute. . . (cites omitted) . . But in 1982, the Supreme Court made clear that Canon 3E (formerly 3C) of the Code of Judicial Conduct provides "broader rule of disqualification" than that provided in the statute, and that both the statute and the canon provide grounds for recusal." Judicial Canon 3 (4) (iv) states:

> ***Judges should perform the duties of their office impartially and diligently.*** **The obligation to perform judicial duties with diligence encompasses certain adjudicative and administrative responsibilities. Further, judges should disqualify themselves proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where: [...] (4) the judge and/or a spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a <u>material witness</u> in the proceeding. *Underline added***

The circumstances in which a trial judge may be disqualified are set out in Code Ann. Sec. 24-102 (Ga. L. 1935. 396; 1943, p. 322). The case of *Stevenson v. Stevenson*, supra, held that these grounds are exhaustive. By negative implication that case also holds that if the judge is an "invisible' or a visible witness he is disqualified. This negative implication is made positive by Canon 3C (d) (iv) of the Georgia Code of Judicial Conduct, 231 Ga. A5-6 See *Savage v Savage*, 234 Ga. 853, 856 (218 SE2d 568) That canon provides that a judge

should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where he is, to his knowledge, likely to be a material witness in the proceeding."
underline added.

In the instant matters Petitioner Gray claimed *inter alia* that the court was a material witness to the fact that none of the tax notices that Petitioner Gray had complained of were ever given or shown in the cases. Manis' personal knowledge and testimony was essential to establish the veracity of the claim against the defendants in the case calling Petitioner a "liar." Her testimony, however, would have directly implicated her in the possible and probable perpetrating a fraud while acting under the colors of State authority, having no subject matter jurisdiction in the related quiet title action and could have established a pattern of gross judicial misconduct as well as racketeering.

Judge Manis was also the subject matter of Count 3 (and related counts) in Petitioner's *Complaint in Trespass Defamation* [R-6 . Petitioner Gray stated that Respondent Blanton's statement to the CBS newscaster that "judge in the case stated that due process was served" was a false statement as Judge Manis had never made the statement and it was a innuendo implying that Petitioner Gray was lying about the tax notices.

Superior Court Judge Manis was a material witness to the appointment of the special master, which Petitioner Gray stated was corrupt, as Respondent Blanton had used the same special master (Zimmerman) repeatedly in over a dozen cases with notice deficiencies. Superior Court Judge Manis would have testified to the method used to appoint the special master that allowed Respondents the luxury of appointing and paying for their own judges. Judge Manis had refused to participate in discovery and answer how the appointment of the special master was determined.

Judge Manis was also a material witness to Count 29, libel per se, where Blanton, in his ongoing tort of outrage, made the following libelous statement:

> **"The only defamation that has occurred and continue [sic] occur in this matter is by you and your continuing outrageous lies against myself, Mr.Dominy Mr. Zimmerman, Judge Levinson and Judge Manis."**

The inferior court was to assume that all of the alleged facts in the *Motion for Recusal* were true and that if recusal was warranted to transfer the case to another judge. *Birt v. State*, 256 Ga. 483, 484 (1) (350 SE2d 241) (1986). To evade this issue, the Judge Manis , in bad faith, refused to address she issue that she was a material witness to the case and in fact witness in chief.

The Court of Appeals in addressing the issue of recusal falsified the record with its findings concerning the recusal of Manis in order to cover up Manis' willful and wanton malfeasance:

> **"Gray identifies no authority, however, for his position that a judge can properly called as a witness on this basis."**

Judge Ellington's statement is a fraud on the court and deceit, as it has no relation to Petitioner's allegations that Judge Manis was required by law to remove herself from the bench as she was a material witness (witness in chief) to the main facts of the case. Judge Ellington's findings are willful and wanton malfeasance. Fraud and malfeasance are not a judicial function.

CONCLUSION

According to the Georgia Constitution, the paramount duty of government in Georgia is to protect property. Without notice there is no due process or property rights. Court's falsification of the record in order to refuse to address the issues before the court concerning the erosion of the right to notice is a true cancer from within.

Respectfully Submitted,
Charles Gray

APPENDIX I

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Filed in Office
Aug 30, 2005
Deputy Clerk Superior
Court Fulton County Ga.

CHARLES GRAY,	)
Plaintiff,	)
	) **CIVIL ACTION**
v.	) **NO. 2004CV89209**
	)
C. TERRY BLANTON, et al,	)
Defendants.	)
	)

FINAL ORDER

This action arises out of a number of allegedly false statements made by one of the Defendants, C. Terry Blanton, to reporters for Channel 46 (the local CBS affiliate), and reported therein, concerning a prior lawsuit between the parties.[1] The Plaintiff seeks damages against all Defendants on a number theories based upon these allegedly false statements.[2] Currently pending are a number of motions, each of which will be addressed in turn.

---

[1] Although the Complaint names numerous other individuals who were present when the statements were made, the only person alleged to have made any statements regarding the Plaintiff is Mr. Blanton.

[2] The Complaint, as amended, brings 31 counts against all Defendants for libel and slander and trespass. The first 30 counts are all based upon three statements made by Defendant Blanton regarding the prior Quiet Title action and related eviction proceedings, which were reported in the media and which Plaintiff claims are false. The 31st count brings an additional claim for libel which is based upon allegedly defamatory statements included in the Blanton Defendants' motion for summary judgment.

(1) Defendants' Consolidated Motion to Dismiss and Motion to Stay Proceedings.

Following the filing of this action, the Defendants filed this pending motion on the basis that this action was barred by this Court's prior Order in Civil Action File number 2003CV66997.[3] In that case, this Court awarded the defendants attorney's fees and further stated:

> The Plaintiff is hereby **BARRED** from filing any further lawsuit against Defendants Foxworthy, Inc., C. Terry Blanton Law Office, P.C., C. Terry Blanton, and Williams S. Dominy (collectively the "Blanton Defendants") until such time as he pays the attorney's fees awarded in this case. The Clerk of Court is **DIRECTED** to comply with this Order. Any action allowed to be filed by the Clerk, without prior proof of payment of attorney's fees awarded herein is subject to dismissal.

(Order, dated October 8, 2004). Defendants contend that this action is barred by this language in the Court's Order and by the fact that the Plaintiff has failed and refused to pay the attorney's fees previously ordered.

However, this Court notes that this action was actually filed *prior* to entry of this Court's Order on the attorney's fees motion. The record in this case demonstrates that this action was filed on August 2, 2004, approximately two months before this Court barred any filings by Plaintiff against these Defendants until fees had been paid. Therefore, the Order is not an effective bar against this action, and, for these reasons, the Defendants' consolidated motion to dismiss and to stay should be and hereby is **DENIED.**

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[3] The motion was initially filed by Defendants C. Terry Blanton and Foxworthy, Inc. It was later joined by Defendant William S. Dominy.

(2) Defendant Meredith Corporation's Motion to Strike and for Judgment on the Pleadings

This action brings a number of claims against Meredith Corporation, which is incorrectly named in the action as Channel 46.[4] All of these claims are based upon three statements reported in the media which Plaintiff asserts are libelous. Each broadcast of the statements is named as a separate claim in the Complaint. This Defendant has moved to strike this action against it on the grounds that this action violates the anti-SLAPP statute contained in O.C.G.A. § 9-11-11.1. This Defendant also moved for judgment on the pleadings on the grounds that the reporting was accurate and therefore cannot be the basis for any libel suit under the fair report privilege contained in O. C. G. A. § 51-5-7.

Code section § 9-11-11.1, which is commonly referred to as Georgia's anti-SLAPP statute, provides *inter alia*:

> (b)For any claim asserted against a person or entity arising from an act by that person or entity which could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern, both the party asserting the claim and the party's attorney or record, if any, shall be required to file, contemporaneously with the pleading containing the claim, a written verification under oath as set forth in Section 9-10-113. Such written verification shall certify that the party and his or her attorney of record, if any, have read the claim; that to the best of their knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension,

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[4] As previously noted, this action brings 31 separate counts for libel, of which twelve contain claims against this Defendant.

> modification, or reversal of existing law; that the act forming the basis for the claim is not a privilege communication under paragraph (4) of Code Section 51-5-7; and that the claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or to cause unnecessary delay or needless increase in the cost of litigation. If the claim is not verified as required by this subsection, it shall be stricken unless it is verified within ten days after the omission is called to the attention of the party asserting the claim. If a claim is verified in violation of this Code section, the court, upon motion or upon its own initiative, shall impose upon the persons who signed the verification, a represented party, or both an appropriate sanction which may include dismissal of the claim and an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, including reasonable attorney's fees.

Under subsection (c) of this Code section, any act in furtherance of free speech includes "any written or oral statement, writing, or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body . . . " This Court notes that this Code section authorizes dismissals of actions where there is no verification attached or where the claim is "falsely verified." Atlanta Humane Society v. Harkins, 278 Ga. 451, 452 (2004). However, under the latter circumstance, prior to dismissing the action this Court determine that "(a) the claimant or his attorney did not reasonably believe that the claim was grounded in fact and that it was warranted by existing law or a good faith argument for the modification of existing law, (b) the claim was interposed for an improper purpose, or (c) the defendant's statements were privilege pursuant to OCGA § 51-5-7(4)." Id.; see also, Georgia

Community Support Solutions, Inc.v. Berryhill, Case No. A05A1121 (decided August 1, 2005); 2005 WL 1798403 (Ga. App., 2005). Even further, if the claim is improperly verified, dismissal is also warranted. Hawks v. Hinely, 252 Ga. App. 510 (2001); David v. Emmis Publishing Corp., 244 Ga. App. 795 (2000).

In ruling on this motion, this Court must first make a threshold finding that the anti-SLAPP statute applies and that verification was required. Second, the court must make a substantive, evidentiary determination whether or not the factors set forth in Atlanta Humane Society v. Harkins, supra, are met.

In reviewing the record in this case, this Court initially finds that the anti-SLAPP statute does apply in this case. It is apparent and cannot be disputed that all of the statements at issue were made in the exercise of free speech and were concerning an issue under consideration by a judicial body. The statements by Defendant Blanton were made to Channel 46 reporter in response to questioning about pending cases. These comments related to both the initial quiet title action, in which the Special Master found against Plaintiff and the owner of the property, John Nelson, as well as to the eviction proceedings which were a direct result of the Special Master's findings in the prior quiet title action. Therefore, under the above case law, this Court must consider, next, if verification meets the statutory requirements.

After review this Court finds that the verification attached to the Complaint satisfies the statutory requirements as to form; however, this Court's inquiry does not stop at this point. Under the above case law this Court must also determine if the evidence demonstrates that the verification is falsely sworn because the Plaintiff's claims could not reasonably be brought in good faith, or because they are brought for an improper purpose, or because they are privileged as a matter of law.[5]

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[5] This issue is also the subject of Defendant Meredith Corporation's motion for judgment on the pleadings.

According to the Plaintiff's own allegations, both he and Defendant Blanton spoke with a Channel 46 reporter on the morning of December 8, 2003, as Plaintiff was being evicted from the residence. (Complaint ¶ 4, Statement of Facts). The reporter interviewed both individuals and the station aired the interviews, including comments from both individuals, "repeatedly" throughout the day and "possibly" the next. *(Id.)* The statements asserted to be libelous include three statements from Defendant Blanton. First, "[t]hat's a lie," which was made in response to a question concerning the prior statements by the Plaintiff that legal notices were not given in the quiet title/Special Master proceeding or in the resulting eviction proceeding. (*Id.*, ¶ 5, Count 1). Second, "Mr. Nelson stated under oath that he had received all proper notices," which was made in the same context. *(Id.*, ¶ 6, Count II). And, finally, "[t]he Judge in the case stated that due process was served." Which was also made during the same interview and relating to the eviction proceeding. *(Id.*, ¶ 7, Count III).

The claims against Defendant Meredith Corporation exclusively relate to the initial broadcast and subsequent rebroadcast of the interviews with Plaintiff and Defendant Blanton, which broadcast included these three statements. In regard to this Defendant, Plaintiff alleges that the statements from Defendant Blanton were published with the knowledge that these statements were false based upon information given to CBS/Channel 46 by [Plaintiff], the egregious circumstances surrounding the statement and the original publisher a lawyer." (*Id.*, ¶¶ 8- 19, Counts 4 - 15*)*. Plaintiff further alleges that Channel 46 failed to exercise due care in the broadcast of theses [sic] statements and should have known they were false because "the statement was suspect as it came out of the mount of a lawyer." (*Id).* Defendant Meredith Corporation answered and denied all material allegations. It also asserted the anti-SLAPP statute as an

affirmative defense and, in its amended answer, attached the videotaped broadcast as an exhibit to its Answer.[6]

Based upon the pleadings and the undisputed evidence included therein, this Court finds that Plaintiff's claims are falsely verified in that they barred by the operation of O.C.G.A. §51.-5-7 as a matter of law. That Code section provides:

> The following communications are deemed privileged:
> (4)Statements made in good faith as part of an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern, as defined in subsection (c) of Code Section 9-11-11.1;,
> (5) Fair and honest reports of the proceedings of legislative or judicial bodies;
> (6) Fair and honest report of court proceedings . . .

Plaintiff's own allegations, taken as true, and the documents and other evidence attached to the Complaint and Answers, demonstrate, as a matter of law, that the reports of the statements alleged to be libelous in this action fall within the ambit of these provisions in this statute.

In this case, Plaintiff's Complaint does not allege that Defendant Blanton's statements were not reported accurately; rather, he claims that Blanton's statements were false and should have been known to be false based upon a number of factors. In addition, he alleges that the report was inaccurate

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[6] This Court notes that, for purposes of the motion for judgment on the pleadings, "[a] copy of any written instrument which is an exhibit to a pleading is a part therof for all purposes." O.C.G.A. § 9-11-10 (c). Therefore, this Court may properly consider exhibits attached to and incorporated into the pleadings, including the videotaped broadcast at issue in this case. Bakhtiarnejad v. Cox Enterprises, Inc., 247 Ga. App. 205 (2000); Lewis v. Turner Broadcasting System, 232 Ga. App. 831 (1998)

because it was not a complete recitation of every fact given to Defendant Meredith Corporation by him.

First, this Court notes that, as correctly stated by Defendant Meredith Corporation, under the fair report privilege, a report of court proceedings does not have to be complete in every detail. "As long as facts are not misstated, distorted or arranged so as to convey a false and defamatory meaning, there is no liability for a somewhat less than complete report of the truth ..." Marhews, v. Atlanta Newspapers, Inc., 116 Ga. App. 337, 340 (1967); see also, Jaillett v. Georgia Television Co., 238 Ga. App. 885 (1999);, Blomberg v. Cox Ent., Inc.,228 GA. App. 178 (1997); Lawton v. Georgia Television Co., 216 Ga. Appp. 768 (1995); Morton v. Stewart, 153 Ga. App. 636 (1980); Shiver v. Valdosta Press, 82 Ga. App. 406 (1950). Moreover, although fair and accurate reporting is conditionally privileged under O.C.G.A. § 51-5-7(4), where a report is substantially accurate and is published in good faith, the reporting entity has a *complete* defense to any claim of defamation. Blomberg, supra.

Based upon this long standing and clear law, it is apparent that the mere fact that the report did not contain each and every act given to the reporter by Plaintiff is irrelevant to the application of the privilege. The report itself demonstrates that the gist of the Plaintiff's claims, as well as Defendant Blanton's statements, were accurately and fairly reported.

In addition, the circumstances surrounding the report and the source of the report - which are the two factors alleged by Plaintiff putting Defendant Meredith Corporation on notice as to the falsity of the statements – are insufficient as a matter of law to raise any question or concern on behalf of Channel 46 as to the truth or falsity of the statements. The mere fact that the person uttering the statement is a lawyer does not, under any case or statute, create a presumption that the statement is false. Nor, standing alone, does the person's status as a lawyer put the reporter on notice of any falsity or create any requirement to further investigate the matter. Furthermore, this Court notes that the statements were made

in regard to judicial proceedings which are circumstances that are traditionally subject to the fair reporting privilege.

Finally, this Court also notes that, contrary to Plaintiff's arguments, neither the source for the statements nor the circumstances of the report demonstrate actual malice. It is well settled that proof that the defendant acted with actual malice will defeat the fair report privilege under O.C.G.A. § 51-5-7. Cooper-Bridges v. Ingle, 268 Ga. App 73 20040. however, to demonstrate actual malice, Plaintiff must show that Defendant Meredith Corporation knew that the statements were false or published the statements in reckless disregard of whether they were false or not. Rabun v. McCoy, Case No. 05A0056 (decided April 12, 20050, 2005 WL 1176652 (Ga. App., 2005). The case law is clear, however, that a failure to investigate in not enough-there must also be evidence that the defendant "in fact entertained serious doubts as to the truth of the publication." Barber v. Perdue, 194 Ga. App. 287, 297 (1989); see also, Lake Park Post v. Farmer, 264 Ga. App. 299 (2003). There is no case law or statute of which this Court is aware which finds that a reporter should have entertained serious doubts about the veracity of the statements merely because they were uttered by a lawyer regarding judicial proceedings.

For these reasons, this Court finds that under the unique and special facts in this case, even assuming that all of Plaintiff's allegations are true, the allegations in the Complaint and Answer disclose with certainty that the Plaintiff would not be entitled to relief under any state of provable facts. Therefore, based upon the particular and undisputed facts in this case, this Court finds that the claim is "falsely verified" under the standards set forth in Atlanta Humane Society v. Harkins, supra, and is subject to dismissal. In addition, Defendant Meredith Corporation's motion for judgment on the pleadings should be and hereby is **GRANTED**. There being no just reason for delay, final judgment on the pleadings is hereby entered in favor of Meredith Corporation incorrectly named as CBS/Channel 46, and against Plaintiff on all claims brought in this action.

As this renders MOOT all of the pending discovery motions with regard to CBS/Channel 46, those motions are hereby **DENIED.**

(3) Plaintiff's Motion for Partial Summary Judgment against Defendant C. Terry Blanton and remaining Defendants' Cross-Motion for Summary Judgment.

The Plaintiff initially moved for summary judgment against Defendant Blanton regarding his liability for the allegedly defamatory remarks. In the motion, Plaintiff contends that Defendant Blanton has failed to produce any evidence demonstrating either the truth of his statements or his lack of knowledge that the statements were untrue. In response, Defendant Blanton and the other remaining Defendants –William Dominy, Charles Wilson, Foxworthy, Inc, and Perrie & Cole, LLC – moved for summary judgment in their favor, arguing that there is no evidence that the statements are false. They also argue that Plaintiff's claims do not rise to defamation, per se, and summary judgment is proper because he has failed to allege special damages.

There are fur general elements a plaintiff must establish to support an action for defamation, either libel or slander. These are: (!) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault by the defendant amount at least to negligence; and (4) special harm. Mathis v. Cannon, 276 Ga. 16 (2002). Under O. C. G. A. §51-5-4, a slander, or oral defamation, is defined as:

(1) Imputing to another a crime punishable by law;
(2) Charging a person with having some contagious disorder or with being guilty of some debasing act which may exclude him from society,
(3) Making charges against another in reference to his trade, office, or profession, calculated to injure him therein; or
(4) Uttering any disparaging words productive of special damage which flows naturally therefrom.

Georgia law is clear, however, that truth is an absolute defense to any claim for defamation. McDonald v. Few, Ga. App. 671 (2004).

After review of the record and evidence in this case, this Court finds that summary judgment is proper in Defendants' favor. As stated above, there are three statements which Plaintiff claims are defamatory – all of which were uttered by Defendant Blanton: "[t]hat's a lie;""Mr. Nelson stated under oath that he had received all proper notices;" and "[t]he Judge in the case stated that due process was served." All of these statements dealt with the issue of notices to the property owner and presumably, to the Plaintiff in regard to the quiet title and eviction proceedings.

First, this Court notes that it is apparent from the record that the latter two statements are truthful. In the quiet title action, Fulton County Superior Court Civil Action File No. 2002CV51576, the Special Master specifically found that service of process upon the property was "perfected by personal service" and that the owner of the property, John Nelson, was "duly and properly served by service of process on or about May, 2002." Citing to the transcript of the hearing. (Special Master's Report, Findings of Fact, ¶¶ 2 and 4(b)).[7]. The Special Master also found that the Plaintiff herein was "duly and properly served by service of process on or about April 17, 2002." (*Id.*, ¶ 3). Finally, the Special Master found that – even if the owner of the property had not received proper notices of the tax sale – under Georgia law this did not invalidate either the sale or the deed therefrom.(*Id.*, Conclusions of Law, ¶¶ 4 and 5)..

The issue of notice was also litigated before this Court, through Plaintiff's motions to vacate the appointment of the Special Master in the 2002 quiet title action. This motion was based upon Plaintiff's allegations that O.C.G.A. 23-3-66 required notice to all parties before a Special Master was appointed in any quiet title action. This Court disagree, found that the Special Master met all of the proper, statutory

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[7] As permitted under Georgia law, this Court may take judicial notice of pleadings in cases before it.

criteria to act in that case, and denied the motion to vacate the appointment, as wall as no fewer than five (5) subsequent motions for reconsideration on other various grounds

In the second related action, Fulton County Civil Action File No. 2003CV66997, the question of proper notice was litigated yet again as well as the issue of Plaintiff's due process rights in the eviction proceedings. In determining that action was subject to dismissal, this Court stated that :

> In his Complaint, Plaintiff claims that the Defendants jointly and severally violated his due process and equal protection rights , committed fraud and extorted money from him during the eviction proceedings.

(Order, dated October 29, 2003, p. 3). This Court went on to review the factual allegations and found, even assuming the allegations were true, that Plaintiff in this case had no cause of action against the Sheriff, the Magistrate Judge, Terry Blanton, his law firm, Foxworthy, In., or William Dominy. In making this ruling, the question of Blanton Defendants' due process duties to the Plaintiff was specifically addressed, and this Court found no due process obligations by these individual defendants owed to the Plaintiff. *(Id. at 4)*

Therefore, the undisputed records contain in two separate judicial proceedings demonstrate that there is evidence, from the record of the hearing before the Special Master, from the Special Master's Report and from Orders by this Court, that John Nelson did receive proper notices regarding the tax sale and the quiet title action, that even if the proper notices were not given the tax sale was proper, and that this Court rejected the Plaintiff's due process claims. Because the undisputed records demonstrate that these two statements are true, no action for defamation or slander may lie and summary judgment is proper on these claims.

Furthermore, this Court finds that the remaining statement of "[t]hat's a lie" is not actionable as a statement of opinion. The question of what constitutes protected opinion statements was discussed extensively in Jaillett v. Georgia

Television Co., 238 Ga. App. 885 (1999). In that case, the Court of Appeals stated that, while there is no wholesale defamation exemption for statements of opinion, such statements are protected under the United States Supreme Court decision in Milkovich v. Lorain Journal Co., 497 U. S. 1 (1990). The central questions are whether statements can reasonably be interpreted as stating or implying defamatory facts about the plaintiff and, if so, whether the defamatory assertions are capable of being proved false. Id., see also, Eidson v. Berry, 202 Ga. App. 587 (1992). Relying on the Restatement (Second) of Torts, §566, the Jaillet court held that, a statement of opinion is *not* actionable if it is based upon *truthful* facts already disclosed in the communication, and the statement is nothing more than the speaker's subjective interpretation of the facts.[8]

This Court has previously found that Defendant Blanton's statements concerning notices to Mr. Nelson or to the Plaintiff, as well as any alleged violation of the Plaintiff's due process rights were truthful. Taken in context, Defendant statement that Plaintiff's comments were a "lie" constituted nothing more than his subjective interpretation of the truthful facts disclosed during the interview, i.e., that Mr. Nelson did receive notice of the quiet title action and this Court rejected the Plaintiff's prior due process claims. As such, this statement is protected speech and is not subject to any action for defamation, and summary judgment is proper on these claims as well.

Furthermore, this Court notes that Count 31 of the Complaint, which was added following the filing of these cross-motions for summary judgment, is also disposed of by this reasoning. This count adds an additional claim for libel

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[8] The requirement that the underlying facts be truthful is not expressly found in this opinion; however, as noted by the District Court in Davita Inc., v. Nephrology Association, P. C., 253 F.Supp. 2d 1370 (S.D.Ga., 2003), this would have to be an implied requirement. As noted therein, "[o]therwise, an individual could simply fabricate a set of facts and then subjectively interpret them negatively without fear of liability." Id. at 1377, n 4.

by the publication of allegedly defamatory statements in the Defendants' motion for summary judgment. As none of the statements are defamatory, as a matter of law, because there is an *absolute* privilege for all statement made in pleadings to the Court under O.C.G.A. § 51-5-8, this Court sua sponte fins that summary judgment is proper on this claim, as well.[9] See, Fedderwita v. Lamb, 195 Ga. 691 (1943); Garner v. Roberts, 238 Ga. App. 738 (1999); O'Neal v Home Town Bank of Villa Rica, 237 Ga. App. 325 (1999); Skoguld v. Durham, 233 Ga. App. 158, 158 (1998); Williams v. Stepler, 227 Ga. App. 591 (19970; Bell v. Anderson, 194 Ga. App. 27 (1989).

For the above reasons, this Court finds that Plaintiff's motion for partial summary judgment should be and hereby is **DENIED.** Defendants' cross-motion for summary judgment is hereby entered in favor of Defendants C. Terry Blanton, William S. Dominy, Charles "Chuck" Wilson, Foxworthy,Inc., and Perrie & Cole, LLC, and against Plaintiff on ALL claims raised in the action.

No substantive issues remaining in this case, all other motions regarding discovery and for sanctions are rendered **MOOT** and are hereby **DENIED.**

SO ORDERED, This 30th day of August, 2005.

/S

Judge Stephanie B Manis
Superior Court of Fulton County
Atlanta, Judical Circuit

Copies to:
Charles Gray, pro se
C. Terry Blanton, Esq.
William S. Dominy, Esq.
Roger A. Chalmer, Esq.

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[9] The trial court has authority to sua sponte grant summary judgment, so long as the grant is proper in all other respects. Builders Marts of America, Inc. v. Gilbert, 257 Ga. App. 763 (2002); Tidwell v. Tidwell, 251 Ga. App. 863 (2001); General—U>S. Branch v. Southeastern Security Ins. Co., 229 Ga. App. 277 (1997)

APPENDIX II

SECOND DIVISION
JOHNSON, P. J.,
MILLER AND ELLINGTON, JJ.

NOTICE: Motions for reconsideration must be *Physically received* in our clerk's office within ten Days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, September 5, 2002)
http://www.gaappeals.us/rules/

June 15, 2006
NOT TO BE OFFICIALLY REPORTED

IN THE COURT OF APPEALS OF GEORGIA

A06A0859. GRAY v. BLANTON et al.

Ellington, Judge.

Charles Gray filed this defamation action against C. Terry Blanton, Charles Wilson, William C. Dominy, Perrie Cole, LLC, Foxworthy, Inc, and Meredith Corporation. In a single order, the trial courted granted Meredith's motion for judgment on the pleadings and the remaining appellees' motions for summary judgment. Gray appeals, challenging the final order as well as an interlocutory order denying his motion to recuse. For the reasons which follow, we firm.

By way of background, the record shows that in 2000 Foxworthy acquired a residence which Gray occupied as a caretaker. In 2002, Foxworthy filed a petition to quiet title. Blanton, who is now a partner in the law firm Perrie & Cole, served as Foxworthy's attorney in the quiet title action and in a later action to evict Gray. A

Special Master determined, inter alia, that the property's previous owner had received all required notice of the foreclosure proceedings and the quiet title action and that Gray lacked standing to contest the quiet title petition. Foxworthy obtained a writ of possession, and Gray was evicted from the property on December 8, 2003.

According to Gray's defamation complaint, a reporter for CBS 46 Atlanta's News Channel ("CBS 46"), which Meredith owned and operated, interviewed Gray as the eviction was taking place. The reporter then confronted Blanton with Gray's claim that Foxworthy failed to serve the property owner as required. In several local news broadcasts on CBS 46, Meredith aired footage of Blanton stating, "That's a lie," "[the previous property owner] stated under oath that he had received all proper notices." And "the Judge in the case stated that due process was served." In his complaint, Gray claimed these three statements were defamatory, alleging a separate count against Meredith as to each broadcast. Gray claimed that Dominy, who also represented Foxworthy, and Wilson, another lawyer, were [sic] "at [Blanton's] side" when he made the allegedly defamatory statements and that they [sic] "encourage[d]" Blanton to do so.

1. Gray contends the trial judge abused her discretion in summarily denying his motion to recuse. OCGA § 15-1-8 provides for mandatory recusal when the trial judge is pecuniarily interested in a case, when the judge is related to any party interested in the result of a case, when the judge has been of counsel in a case before being appointed as a judge, or when the judge presided over the case in an inferior tribunal. In addition, recusal is required when a trial judge has a bias "of such a nature and intensity to prevent the complaining party from obtaining a trial uninfluenced by the court's prejudgment." *In re*

Estate of Robertson, 271 Ga. App. 785, 790 (5) (611 SE2d 680) (2005).

> To warrant disqualification of a trial judge the affidavit supporting the recusal motion must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment. Such bias must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his [or her] participation in the case. Actual impropriety need not be shown. It is enough that the judge's impartiality might reasonably be questioned. This questioning, however, requires a reasonable perception held by a fair-minded and impartial person based upon objective fact or reasonable inference; it is not based upon the perception of either interested parties or their lawyer-advocates, seeking to judge shop and to gain a trial advantage, because both of their credibility is suspect from self-interest.

(Citations, punctuation, and footnotes omitted.) Id. As a threshold matter, a trial judge determines whether a motion to recuse is timely, whether the supporting affidavit is legally sufficient, and whether, assuming any of the alleged facts were true, recusal would be warranted. *Birt v. State*, 256 Ga. 483, 484 (1) (350 SE2d 241) (1986). "In reviewing a rulling on a motion to recuse, we employ an abuse of discretion standard." (Footnote omitted.) *In re Estate of Robertson*, 271 Ga. App. at 790 (5).

Uniform Superior Court Rule 25.1 provides, in pertinent part, "All motions to recuse or disqualify a judge presiding in a particular case or proceeding shall be timely filed in writing and all evidence thereon shall be

presented by accompanying affidavit(s) which shall fully assert the facts upon which the motion is founded."

Furthermore:

> [t]he affidavit shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons and circumstances of extra-judicial conduct or statements, which demonstrate either bias in favor of any adverse party, or prejudice toward the moving party in particular, or a systematic pattern of prejudicial conduct toward persons similarly situated to the moving party, which would influence the judge and impede or prevent impartiality in that action. Allegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion or warrant further proceedings.

Uniform Superior Court Rule 25.2

In support of his motion, Gray first deposed in his affidavit that the trial judge is likely to be a material witness in his defamation suit, based on her awareness of whether certain pleadings or items of evidence had been filed in the record. Gray identifies no authority, however, for his position that a judge can properly be called as a witness on this basis. Secondly, Gray claimed that the trial judge has a conflict of interest because of an allegedly pending mandamus petition in related litigation. It appears from the record, however, that the mandamus action has been resolved. Finally, Gray claimed that the trial jduge has a bent of mind adverse to his claims. Gray's affidavit, however, failed to state specific facts or reasons for this belief, apart from the trial court's rulings in favor of the appellees. Adverse

rulings alone are not enough to show that a trial judge is prejudiced against a litigant. *Williams v. State,* 257 Ga. App. 589, 591 (4) (571 SE2d 571) (2002). After a thorough review of the record, we find that Gray's affidavit accompanying his motion consisted of bare conclusions and opinions legally insufficient to support the motion or warrant further proceedings. Because Gray's motion was not legally sufficient, the judge was authorized to deny the motion summarily. *Dyer v. Souther*, 272 Ga. 263 (1) (528 SE2d 242) (2000); *Scott v. State*, 232 Ga. App. 337, 340 (2) (501 SE2d 255) (1998); Uniform Superior Court Rules 25.1 and 25.2.

2. Gray contends the trial court erred in granting summary judgment in favor of Blanton, Wilson, Dominy, Perrie & Cole, LLC, and Foxworthy, Inc, (collectively, "Blanton") on Counts 1 through 3 of the complaint and judgment on the pleadings in favor of Meredith on Counts 4 through 15.

After a thorough review of the record and consideration of Gray's arguments, we find the following circumstances exist and are dispositive of the appeal on these issues: (1) the evidence supports the judgment; (2) no reversible error of law appears and an opinion would have no precedential value; and (3) the judgment of the trial court adequately explains the decision. Accordingly, we affirm the judgment of the trial court without further discussion. See Court of Appeal Rule 36.

3. Gray contends he did not have proper notice of any motion for summary judgment on Counts 16-31 and, therefore, the trial court erred in granting summary judgment in favor of Blanton on those claims, citing OCGA § 9-11-56 (c). Blanton's motion for summary judgment and

supporting brief explicitly pertained to all of Gray's pending claims, which at that time included Counts 16 through 30. Thereafter, Gray amended his complaint to add Count 31, "libel per se, OCGA § 51-5-1-; malicious abuse of privilege, OCGA §51-5-9[1], " claiming Blantondefamed Gray in his motion for summary judgment.

As to Counts 1 through 3 and Counts 16-30, the records shows, contrary to Gray's contention, that the claims were the subject of a motion for summary judgment filed at least 30 days before the trial court considered the motion. As to Count 31, because the allegedly defamatory material in Blanton's summary judgment brief merely incorporated the allegedly defamatory material which was the subject of Counts 1 through 3 and Counts 16 and 30, Gray cannot credibly claim to be unaware that the trial court's consideration of Blanton's motion for summary judgment could dispose of the entire action. Furthermore, Gray has not identified any evidence he could have adduced or any argument he could have made in response to Blanton's motion for summary judgment which he did not, in fact, present to the trial court before decision. Accordingly, Gray had a full and fair opportunity to be heard in opposition to the entry of summary judgment. ***Hart v. Appling County School Bd.,*** **266 Ga. App. 300, 303 (2) (b) (597 SE2d 462) (20040. Under these circumstances, we affirm.**

Judgment affirmed. Johnson, P. J., and Miller, J., concur.

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[1] "In every case of privileged communications, if the privilege is used merely as a cloak for venting private malice and not bona fide in promotionof theobject for which the privilege is granted, the party defamed shall have a right of action."

APPENDIX III

Court of Appeals

Of the State of Georgia

ATLANTA, JUNE 29, 2006

The Court of Appeals passed the following order

Case No. A06A0859

CHARLES GRAY V. C. TERRY BLANTON ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 29, 2006

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court Hereto affixed the day and year last above written.

Clerk.

William L. Martin/S

APPENDIX IV

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

Date: October 30, 2006

Charles Gray
216 Oak Street
Hogansville, GA 30230

Case No. S06C1929

CHARLES GRAY v. C. TERRY BLANTON ET AL.

COURT OF APPEALS CASE NO. A06A0859

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

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Therese S. Barnes, Clerk

APPENDIX V

SUPREME COURT OF GEORGIA

Case No. S06C1929 Atlanta, December 15, 2006

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CHARLES GRAY v. C. TERRY BLANTON et al.

Upon consideration of the Motion for Reconsideration Filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court herero
Affixed the day and year last above written.

Therese S. Barnes, *Clerk*

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF

THE UNITED STATES

Case No. 06-1564

Charles Gray,
Petitioner

v.

C. TERRY BLANTON; WILLIAM S. DOMINY; CHARLES "CHUCK" WILSON; FOXWORTHY, INC., A NEVADA CORPORATION; PERRIE & COLE, LLC; CBS/Channel 46 of Atlanta; *et al.*
Respondents

A PETITION FOR A WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondent C. Terry Blanton appears *pro se* and files this Response in Opposition, including statements of material facts and brief of law, in response to Petitioner Gray's Petition for Writ of Certiorari, hereto filed to this Honorable Court.

STATEMENTS OF MATERIAL FACTS.

Despite Petitioner's statements to the contrary, the following are the indisputable statements of fact concerning the various civil actions that Respondents have been involved in, with Petitioner Gray.

The first and perhaps the single most important fact of all in the underlying four (4) separate civil actions (including the instant case upon which the Writ is requested), which began in 2002, is that at all times during the course and conduct of all the underlying civil action matters, Charles Gray was not ever the owner of the Respondent Property. Indeed by his own statements, it is undisputed that at all times during the litigation surrounding the 897 Edgewood Avenue property (the "Respondent Property"), Petitioner Gray was always and only a tenant of the Respondent Property that was owned by John B. Nelson.

Next, C. Terry Blanton, an attorney and State Bar Member in Georgia, represented Foxworthy, Inc. in an underlying quiet title action in which Foxworthy was declared the fee simple title owner of the property located at 897 Edgewood Ave., Atlanta, Georgia. It was determined in that underlying quiet title action (Civil action no. 02-CV-51576, Fulton Superior Court – the "Title Litigation") that the owner of the Property, John B. Nelson, received a statutorily requisite tax deed "barment" of the equity of

redemption notice from Foxworthy and failed to redeem the tax sale Respondent Property within the required period of time.

In fact, at the referenced Special Master's hearing which Blanton attended and represented Foxworthy, Inc., and at which hearing Petitioner Gray was physically present, the Respondent Property Owner Nelson admitted under oath that he received both the statutory notice to bar the equity of redemption from a tax sale (the "barment" notice), and that he was personally served with process of service in the referenced Quiet Title petition case.

In said Title Litigation, it was also determined that Petitioner Gray had no standing to litigate any issues as to the ownership of, or the receipt of any notices – other than service of process – in such matter, as Petitioner was, by his own admission, just the "caretaker" of the Property, and that Gray had no other right, or title in or to the Respondent Property. [R-338–349].[1]

The second case brought by Gray as to a continuation of these spurious and outrageous allegations and arguments was *Gray v. Levenson, Blanton, et al.*, Civil Action No. 03CV-66997, Fulton Superior Court (the "Second Case"). The Second Case was subsequently closed by the trial court, after the entry of a Final Order Dismissing Case. In such Second Case civil action, as best as Petitioner's rather obtuse complaint could be interpreted, Judge Louis Levenson (as a Fulton County Magistrate), The Fulton County Sheriff, Blanton, Foxworthy, Inc. and Dominy were accused of violating Petitioner's "due process" rights. [R-44].

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1 All references shown by "R" are references to the appellate Record of the instant matter, as filed in the Georgia Court of Appeals, Case No. **A06A0589**.

In the Second Case, Blanton, Foxworthy, Inc. and Dominy filed a motion to dismiss, which motion was granted by such final Order Dismissing Case [R- 44–47]. In such Final Order, Hon. Stephanie Manis, as the trial judge found and held that, as a matter of law, the "Blanton" Respondents had no due process or equal protection obligations to Petitioner, under the United States or the Georgia Constitutions. The fraud claims against the "Blanton" Respondents were also dismissed in that, by Petitioner's own allegations, such putative fraudulent statements were made to other parties, and were–moreover–made in the course of, and pursuant to, pending litigation. [R- 45-46]. After the end of the Second Case, pursuant to an Order of the Magistrate Court of Fulton County, Petitioner was dispossessed and evicted from the Respondent Property, on December 8, 2003, as Petitioner admits in his Writ petition to this Court.

While Petitioner was being physically evicted from the Respondent Property pursuant to the writ of possession obtained by Attorney William S. Dominy on behalf of Foxworthy, Inc., Blanton and Dominy were at the Respondent Property to view the eviction proceedings on behalf of their client, Foxworthy, Inc. During the eviction proceeding, Petitioner Gray was interviewed by an Atlanta TV Channel 46 news reporter, during which interview he apparently repeated his contentions made throughout the proceedings of underlying Title Litigation, the Second Case, and the Dispossessory action, and the instant case upon which this Writ petition is based, that the actual owner of the Respondent Property, John Nelson, was never served with "notice", ostensibly of the proceeding to bar or foreclose the equity of redemption after a tax sale; or that somehow either Nelson's or Gray's "due process rights" were violated because of a lack of notice of the pending tax deed barment and/or quiet title litigation or dispossessory litigation matter(s).

When the Channel 46 Reporter then asked Blanton about Petitioner's contention that Nelson had never received notice of the barment proceeding or the underlying civil action Quiet Title Petition, Blanton indicated such statements were lies.

The underlying Quiet Title Petition was an action filed by Appellee Foxworthy, Inc. against certain real property identified therein as the "Respondent Property" Such Quiet Title Petition case was styled as *Foxworthy, Inc. v. 897 Edgewood Avenue, John Nelson, et al.*, civil action file number 02cv-51576, Fulton Superior Court (the "Title Litigation"). Such case was originally assigned to Hon. Judge Stephanie Manis; and thereafter assigned to Hon. Judge Barry L. Zimmerman, as the requisite Special Master, pursuant to O.C.G.A., § 23-3-63.

On August 2, 2002, the Special Master, Hon. Barry L. Zimmerman conducted a hearing on the various and several motions filed by the parties, including Petitioner. [R-Exh. "A", 339]. The Special Master took testimony from John B. Nelson, the Property owner, the Special Master heard from Charles Gray {Petitioner herein}, and the Special Master received statements in his place from Mr. Blanton. Based upon such hearing, and the admission of certain and sundry documentary evidence, the Special Master submitted a Final Report, including Findings of Fact and Holdings of Law.

Such Special Master's Final Report was attached as an exhibit to Gray's "Motion for Summary Judgment and Blanton's subsequent response to Petitioner's Motion for Summary Judgment; "Re-Stated Motion for Pre-Trial Conference and Case Management Order", filed March 28, 2005 with the Trial Court in this instant matter. [R- 328–349].

In such Special Master's Final Report, a number of most pertinent Findings of Fact were adduced by said Special Master. First, the Special Master found as a matter of fact that Service of Process upon the named Respondent Property was perfected by personal service. [R- 339]

Next, the Special Master found as fact that Petitioner Gray was duly and properly served by service of process of the underlying Title Litigation on or about April 17, 2002. The Special Master found further that Petitioner Gray was not the owner of the Respondent Property, 897 Edgewood Avenue. Indeed, the Special Master noted that Petitioner Gray by his own admission, *in judicio*, was nothing more than an occupant-"caretaker" of the Respondent Property. [R-340] As of the date of the Special Master's Hearing, Gray had not filed any answer, denying the material allegations and contentions of the Quiet Title Petition. [R-340]

As to the actual property owner, John B. Nelson, the Special Master found that Nelson was duly and properly served by service of process of the Title Litigation on or about May 25, 2002. As of the date of the Special Master's hearing on August 2, 2002, Nelson had not filed any document that could be construed and qualified as an answer, denying the material allegations and contentions of the Quiet Title Petition. Accordingly, at that time Nelson was found by the Special Master to be in irrevocable and absolute default. [R- 342].

Furthermore, at the time of service upon Nelson of the original Quiet Title Petition, Petitioner Foxworthy, Inc., through counsel Blanton, had also served First Requests for Admissions {the "RFA"}, pursuant to O.C.G.A. {the Official Code of Georgia Annotated}, § 9-11-36. With respect to any response by Nelson to such RFA, the Special Master found as fact that Nelson did not respond to such

Requests for Admissions within forty-five (45) days from May 25, 2001, and such requests for admissions were therefore all deemed admitted as a matter of law. [R- 342-343]

As to the proceeding to foreclose and bar the right of redemption from a tax sale {pursuant to O.C.G.A., §§ 48-4-45—46 (the "barment" proceeding)}, the Special Master found, based upon his testimony, that Nelson had actual personal knowledge of the pendency of the statutory barment proceeding by not later than March 4, 2002; and that he had received by facsimile transmission a copy of the redemption amount calculation notice by not later than March 13, 2002. Nelson's right to redeem such property from such tax sale expired on or about March 17, 2002. [R-344].

The Special Master further noted at the hearing that no one, including both Petitioner Gray and Nelson had ever made any requisite tax sale redemption amount tender, pursuant to O.C.G.A., 48-4-47. Indeed, Nelson testified that he would not make any tender of the statutory redemption amount. [R-340, 343]

The Special Master's Report was accepted, approved and incorporated into Judge Manis' Final Order in Civil Action No. 02CV-51576, which was signed and filed on November 27, 2002. Such final judgment was never actually appealed, nor reversed by any appellate court.

When Blanton was approached by the Channel 46 Reporter on December 8, 2003, the issues that Blanton understood he was asked to respond to, had to do with whether or not Gray or Nelson had received certain notice(s), either as to the barment proceeding, or as to service of process of the notice of the Quiet Title Litigation, or whether service of the dispossessory action was proper as against the

property and tenant only [in that only possession of the premises was being requested as to the Writ of Possession].

In that Blanton and his firm had completed the statutory "barment" proceeding, had filed and prosecuted the Quiet Title Petition matter, and had attended the various and several different hearings on the petition for the writ of possession (over a period of more than a year) in the Magistrate Court of Fulton County, Blanton had personal knowledge that Nelson had been personally served with both the barment proceeding and the Quiet Title Petition proceeding.

Moreover, Blanton knew that service had been perfected, pursuant to applicable state statutes in the dispossessory action. Blanton therefore also knew from personal knowledge that the "owner of the house admitted under oath that he had been properly served", as per the Special Master's Report, and that at least two final orders of judgment had been entered which documented that "due process was done" as to Nelson and Gray.

As to any supposed violation of "due process" claim by Petitioner against any of the Respondents, any such claim was denied by the Final Order of the trial Court, filed October 29, 2003, in the Second Case, *Gray v. Levenson, Blanton, et al.*, Civil Action No. 03CV-66997, Fulton Superior Court {presided over by Judge Manis} [R- 44—49].

As to the allegations against the Honorable Stephanie Manis, a judge of the Fulton County, Georgia Superior Court (Atlanta Circuit), there is absolutely no evidence cited by Gray to support the spurious and outrageous allegations against Judge Manis, or indeed as to such allegations against the Hon. Judge Ellington of the Georgia Court of Appeals. In simple point of fact, there is no factual basis to any of

Gray's allegations against any of the Respondents, and/or against Judge Zimmerman.

Moreover, Gray's statements to the contrary, Blanton having personal knowledge thereof as Foxworthy's attorney, Blanton states that Vesta Holdings and Foxworthy, Inc. do not now, nor have such entities ever had an "associate" relationship, as described by Gray. Next, Gray makes yet another misstatement of fact when he alleges as to Attorney Robert Proctor's activities as a purported unlicensed lobbyist. There is absolutely no evidence to support any allegation that Mr. Proctor ever lobbied, illegally or otherwise on behalf of Foxworthy, Inc. In any event, such allegations are not germane to Gray's petition.

Petitioner makes a statement[2] that "Gray also had a prior mortgage on the property." Blanton has reviewed the public deed records as to the Respondent Property on numerous occasions, and there is no public record entry reflecting that Gray ever had a mortgage on the Respondent Property. Moreover, and in any event, as Petitioner did not raise the issue in the Title Litigation, such allegation is factually untrue, and is *res judicata* as to any such issue.

ARGUMENT AND CITATIONS OF AUTHORITY.

1) **This Petitioner Has No Standing To Bring And/or Maintain Claims in the Petition.**

a) *This Petitioner is Not An Attorney*: Respondent submits that Petitioner Gray, in any event, has no standing whatsoever to bring any factual or legal claims or filings for relief on behalf of any other Party, which Gray has done in effect on behalf of John Nelson. The entire gravamen of his filings in all four cases is about

2 *Petition for Writ*, pg. 7, 2nd ¶.

several and various issues dealing with a supposed lack of service of notice **upon John B. Nelson**, of either a notice of the Dispossessory petition, or the Sheriff's levy and sale proceeding, and/or the service of process upon John B. Nelson in the barment proceeding, and/or in the Title Litigation.

It is beyond question or dispute that Petitioner Gray is not now, nor has he ever been, a member in good standing of the Georgia Bar Association. In that he is not admitted to practice law in Georgia, Gray can only appear in representation of himself, *pro se*. It is further beyond dispute that Gray cannot, under any circumstances appear on behalf of, and represent, any other person or entity in this, or indeed in any, matter.

It goes without saying, therefore, that he cannot represent John B. Nelson or make or maintain legal claims on behalf Mr. Nelson, even if he was, as he claims, some sort of "caretaker" agent for Mr. Nelson. This is also true as to the issues being raised in the Petition as to any lack of notice to Nelson, or any allegation raised as to any State or Federal RICO claims, in that Gray was not the owner of, or had any title to the Respondent Property; and as the Tenant in the Respondent Property, he had no other or further possessory rights more than the Owner, Nelson, had.

b) *Petitioner Has No Standing, For His Failure to Make The Redemption Tender:* Furthermore, Petitioner is continuing to make some sort of argument or issue that he, as a tenant, has the right to continue to bring or maintain these continuing actions because his landlord/owner of the Respondent Property was allegedly not served with certain notices, at certain times.

That is to say, Gray, with no legal standing to do so, is raising issues of fact or law that rest uniquely in the Respondent Property Owner, John Nelson; with the claim that because of such issues, Gray–strictly as a tenant–is nonetheless entitled to continue to raise these issues. In effect, Gray is in this Petition, as he has continuously throughout the pendency of four (4) separate civil actions, contesting the validity of the tax sale proceeding generally, on behalf of Nelson, by arguing that **Nelson did not get certain notices**.

That having been said, however, one of the requirements for any person or entity who is seeking to set aside or void a tax levy and sale proceeding is that of the tender of the proper redemption amount as a prerequisite for bringing and maintaining such action. Gray has absolutely failed to comply with such a requirement of law prior to filing or maintaining any substantive Response or pleading with respect to the issues as raised by Gray.

All the applicable statutory and case law in Georgia holds that, as an absolute condition precedent to seeking to redeem or maintaining any action to redeem property sold at a tax sale, or to attack the validity of the Tax Deed, or the proceeding to bar the equity of redemption, this or any such Petitioner must make a continuing tender of the proper and full redemption amount in a timely manner.

The underlying tax execution and levy, and subsequent lien and tax sale in this matter is based upon the admitted and uncontested fact that there were, at the time, unpaid State and County real estate ad valorem taxes on the Respondent Property. Furthermore, it is undisputed that all of the operative factual allegations of the Quiet Title

petition are all true and correct, in that there was a valid tax sale and tax deed conveyance.

The precise statute setting out the requirement, with regard to a Petitioner seeking to redeem from the tax sale, and/or to set aside or void the sale, and subsequent tax deed, is O.C.G.A. § 48-4-47, which states in pertinent part, as follows:

> (a) After notice to foreclose the right of redemption . . . has been given, no action shall be filed, allowed, sanctioned, or maintained for the purpose of setting aside, canceling, or in any way invalidating the tax deed referred to in the notice or the title conveyed by the tax deed unless and until the [party bringing] the action **pays or legally tenders to the grantee in the deed or to his successors the full amount of the redemption price for the property**, as provided for in this article. [Emphasis added]

This absolute requirement of the tender of the redemption, under Georgia law, mandates that any party seeking to redeem property from a tax sale or to set aside such tax sale must first make a tender of the proper redemption amount, is based upon the equitable maxim that "he who would have equity must do equity", so that not only must the party seeking equitable relief from a tax sale have paid or tendered sum due to the other party, but the Petitioner herein must have done so before filing of the party's action or, as in this case, the filing of a response to, or motion to dismiss, the Quiet Title action

to confirm such tax sale.[3] {*See, for example, Hill v. City of Savannah*, 333 Ga. App. 742 (1998)}

2) **The Trial Court did not abuse its discretion by Granting Summary Judgment as to All Claims of Defamation.**

Next, Petitioner's claims for defamation fail as a matter of law for two reasons. First, during the course of the TV interview, Blanton only made three substantive statements: (1) "That's a lie", (2) "...got a court order saying due process was done"; and (3) "the owner of the house [John Nelson] admitted under oath that he had been properly served".

The second and third statements are, as a matter of fact and law, *per se*, not defamatory, in that both statements are true, and neither statement, in and of itself, falls within any of the four definitions of defamatory language, as set out in O.C.G.A., § 51-5-4.

Blanton told the truth when he stated that service of notice and process against Petitioner and Nelson both was perfected in the underlying Title Litigation when the Special

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[3] *Durham v. Crawford*, 196 Ga. 381, 26 S.E.2d 778 (1943); *See, e.g., Machen, et al. v. Wolande Management, Inc.*, 271 Ga. 163 (1999). See also, the following language from ***Pindar, Georgia Real Estate Law***: "Equity will not ... cancel a defective tax sale until the [putative] owner tenders the amount of tax due and payable." [§ 4-53, *Pindar, infra*], and ". . . where the Petitioner [in fi fa] has not paid or tendered the [proper redemption] amount ... admittedly due, relief will be denied." § 4-54, *Pindar, infra*, citing *e.g., Derrick v. Campbell*, 219 Ga. 795 (1964); *See also, Register v. Langdale*, 226 Ga. 82, 84 (1970).

Master's Report held that service was made to the owner of the Property, John Nelson, by the sworn testimony of Nelson himself. [R- 342]. Furthermore, in both the Title Litigation and the Second case, both Final judgments *per se* stand as proof that the Georgia courts have ruled that "due process" was done as to Nelson and Gray.

Next, Petitioner has failed to prove at least one of the essential elements of defamation under O.C.G.A. § 51-5-4. Accordingly, the Respondents were entitled to summary judgment, as a matter of law, on Petitioner's claims for slander and defamation.

Blanton told the truth. Under Georgia law, there is no claim for defamation where the statements are true. [O.C.G.A. § 51-5-6; *McDonald v. Few*, 270 Ga. App. 671 (2004); *Kersey v. U.S. Shoe Corp.*, 211 Ga.App. 655 (1994)]. Here, Blanton responded to a question posed by a Channel 46 news reporter. The question itself was not aired and Channel 46 did not archive the actual question posed by the Channel 46 news reporter. Blanton recalls he was asked about Petitioner's claims that the owner of the Property, John Nelson, never got "due process", in that he had never received notice of several proceedings, in general dealing with the foreclosure of the equity of redemption from a tax sale, or perhaps the subsequent Quiet Title Petition action.

The Special Master's Report in the underlying quiet title action made a finding of fact that Nelson received service of the "barment" notice and the Quiet Title Petition [R – "Special Master's Report", pp. 341–344]. Petitioner was a party to the underlying lawsuit, was physically present at the actual Special Master's hearing, and knew about the Special Master's Report, including such Findings of Fact, which Quiet Title Petition case Petitioner attempted to appeal, even though by his own testimony, he was always and only the Property "caretaker".

Accordingly, Blanton's statement that Petitioner lied about Nelson not being served with either the barment notice or service of process in the Quit Title Case was true. Petitioner cannot sustain a cause of action for defamation in light of the fact that Blanton spoke the truth. Under all Georgia law, the truthfulness of the statements made by Blanton is an absolute defense to any claim by Petitioner for defamation. [*See, for example, McDonald v. Few, supra.*

3) **Petitioner Fails To Establish One Of The Four Essential Elements Of Slander**

To prevent petty lawsuits over whether a party spoke the truth about another, there are four general elements (all of which must proven) that Petitioner must establish in order to make out his case for defamation; *i.e.*, (1) a false and defamatory statement concerning the Respondents; (2) an unprivileged communication to a third party; (3) fault by the Petitioner amounting at least to negligence; and (4) special harm or the "actionability of the statement irrespective of special harm." [*See, generally, the Restatement of Torts, see also, Mathis v. Cannon*, 276 Ga. 16 (2002)]. When the undisputed facts are reviewed and taken into account, it is clear that Petitioner cannot, as a matter of fact and law, establish any one of these four elements.

Next, O.C.G.A. § 51-5-4 requires that the party bringing a defamation action for either slander or libel must establish at least one of the following four elements:

(A) Imputing to another a crime punishable by law;

(B) Charging a person with having some contagious disorder or with being guilty of some debasing act which may exclude him from society;

(C) Making charges against another in reference to his trade, office, or profession, calculated to injure him therein; or

(D) Uttering any disparaging words productive of special damage which flows naturally therefrom [O.C.G.A., § 51-5-4]

It must be clear that none of Blanton's statements fall under sub-paragraphs 1 and 2 above. It is equally true that Blanton's statements were not in any way uttered in context of Petitioner's admitted status or employment as a supposed "caretaker". Finally, nowhere has Petitioner even alleged or alluded to any special damages that he has suffered.

In his original Complaint, Petitioner alleged that Blanton's statements imputed that Petitioner had engaged in criminal activity, including perjury, obstruction of justice, slander of title, slander and fraud. Of course, Blanton's second and third statements did not do any of these, and in fact, neither of these statements comes under any of the above cited definitions; and moreover such statements are, in fact true.

However, as a matter of law, Blanton's response–"that's a lie"–to Petitioner's statements to a television reporter in which Petitioner claimed that the Property owner, John Nelson, never received certain notices does not rise to the level of accusing Petitioner of a crime.

The Trial Court held that the statement. "that's a lie" was a statement of opinion by Blanton, which statement of opinion was based upon the other two statements, both of which were and are demonstrably true. Such holding by the Trial Court is based in large part on the holding of the Court of Appeals in *Jaillett v. Georgia Television Co.*, 238 Ga. App. 885 (1999), which decision was based in primary part on the decision of the United States Supreme Court in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

Whether or not such statement is a protected statement of opinion, it is still not actionable, in that it does not meet the four requirements in order to maintain a defamation action under the *Mathis* case, *infra*; or fit into any of the four elements of the tort, as set out in O.C.G.A., § 51-5-4.

The statement "that's a lie" made no reference whatsoever to Petitioner's trade or profession. To the extent that Petitioner makes some claim that Blanton's statements injured him with respect to his trade, office or profession, Petitioner must show first that such statements make reference to his trade as a "caretaker". Of course, the statements on their face make no such reference. As such, Blanton's statement "that's a lie" clearly refers only to Petitioner's assertion that due process – or a lack of notice – was not done in the barment proceeding, or in the Quiet Title petition, or perhaps in the dispossessory action.

Petitioner's complaint fails completely to even allege, let alone establish, any special damages as a result of Blanton's statement; and in fact, again, such statement does not rise to the level of defamation under of the definitions of O.C.G.A., § 51-5-4 and as noted under the test set forth in *Mathis*. Thus, Petitioner, as a matter of law, has failed to make out a claim for defamation, either libel or slander.

4) **Petitioner Has the Burden of Proof as to His Claims of Defamation.**

In reviewing matters of libel, slander, and defamation, the Supreme Court of Georgia places the burden of proof squarely upon the Respondents. In a unanimous decision by the Georgia Supreme Court, in *Cox Enterprises, Inc. v. Nix*, 274 Ga. 801 (2002), the Court stated:

> [I]n defamation cases it is the rule with regard to summary judgment that a Petitioner who will not

> bear the burden of proof at trial need not affirmatively disprove the nonmoving party's case, but may point out by reference to the evidence in the record that there is an absence of evidence to support any essential element of the nonmoving party's case, and that the nonmoving party cannot then rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue.

The Georgia Court of Appeals followed this rule of law in *Simmons v. Futral*, 262 Ga. App. 838 (2003), by noting, "The burden of proving falsity in an alleged defamatory statement is on the Plaintiff."

Petitioner failed to show how the findings of fact made by the Special Master in 2002CV51576 [R 338-349] and the legal conclusions made in Judge Manis' Final Order 2004CV89209 [R 425-438] are invalid. With this in mind, the Petitioner presents no evidence whatsoever that any statement made to the Channel 46 Reporter by Petitioner Blanton is indeed false and made with malice.

It must be clear from all the evidence adduced by Appellee (and indeed, even by statements in Petitioner's Petition and Brief, such as they are), that even if the Trial Court based its holdings upon, for example, of the issue of a statement of opinion being protected accordingly, nonetheless, given the undisputed facts in this matter, Petitioner cannot as a matter of law, support and prove his allegations of defamation. The findings of facts by the Special Master are *res judicata* as to the issues of proper notice of the barment proceeding to Nelson and the perfecting of notice and service of notice in the Quiet Title Petition case.

To the same effect is Final Order Dismissing Case, in civil action file no. 03CV66997, which Final Order is *res*

judicata as to the issue of Petitioner's "due process" rights, as well as notice of the dispossessory and subsequent order granting a Writ of Possession and the resulting eviction proceeding.

CONCLUSION.

This Petition for a Writ of Certiorari is nothing more or less than Petitioner's continuing effort to cast himself as some sort of victim of a vast plot or conspiracy against him, involving literally hundreds of people, including members of the Fulton County government, at least four (4) sitting judges of the Fulton County Court system and the Georgia Court of Appeals, and at least by inference the entirety of the Justices of the Georgia Supreme Court.

All this from a man who did not own the Respondent Property in question at any time during the pendency of the several and various legal actions that have gone on for more than five (5) years now; nor was Gray a taxpayer as to ad valorem taxes on real property; and finally, a person who has suffered no actual loss of property or damages, other than the occupancy of a property in which he, **by his own admissions, was never more than a "caretaker" tenant**.

Furthermore, Petitioner has not, as a matter of fact and law, presented any case or controversy that would justify this Honorable Court in granting the petitioned for Writ, and therefore certiorari is not appropriate.

Finally, under the provisions and authority of Supreme Court Rule 24.6, Blanton requests and moves this court to deny and/or dismiss the Petition for Certiorari, in that the entire document is so riddled and infected with material that is irrelevant, immaterial, in large measure false and fraudulent, and certainly scandalous and outrageous, so as to make the entire petition fatally flawed.

Under these circumstances, Respondent Blanton respectfully submits to this Honorable Court that Petitioner's application for certiorari should and must be denied.

Respectfully submitted,

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